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In The

Supreme Court of the United States

October Term, 1983

MARJORIE SCHLOSSBERG DORIN and PHILIP DORIN,
Plaintiffs-Appellants,

vs.

CLUB MEDITERRANEE, S.A., a Foreign Corporation,
Defendant-Appellant,

-and-

CLUB MED, INC., CELEBRITY TRAVEL SERVICE, LTD., KENT TRAVEL SERVICE, INC., SOCIETE GENERALE and NATIONAL UNION FIRE INSURANCE COMPANY,
Defendants.

On Appeal from the New York Supreme Court, Appellate Division, First Department

JURISDICTIONAL STATEMENT AND APPENDIX FOR DEFENDANT-APPELLANT

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QUESTION PRESENTED BY THE APPEAL

Have the New York courts violated the Supremacy Clause of the Constitution, international comity, and the provisions of the Convention of the Taking of Evidence Abroad in Civil or Commercial Matters by ordering responses to interrogatories to be compelled of a French corporation in the Republic of France pursuant to the New York Civil Procedure Law and Rules?

A LIST OF THE PARTIES TO PROCEEDING IN THE NEW YORK COURTS

Co-defendant parties listed in the above caption include: Club Med, Inc., a Delaware corporation; Celebrity Travel Service, Ltd., a New York corporation; Kent Travel Service, Inc., a New York corporation; Societe Generale, a French corporation; and National Union Fire Insurance Company, a Pennsylvania corporation.

RULE 28, RULES OF THE SUPREME COURT

Notice is hereby given that 28 U.S.C. §2403(b) may be applicable. To the best of Appellant's knowledge no court has certified to the Attorney General of the State of New York the fact that the constitutionality of the New York Civil Practice Law and Rules, as applied, has been drawn in question.

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No.

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October Term, 1983

MARJORIE SCHLOSSBERG DORIN and PHILIP DORIN,

Plaintiffs-Appellees,

vs.

CLUB MEDITERRANEE, S.A., a Foreign Corporation,

Defendant-Appellant,

-and-

CLUB MED, INC., CELEBRITY TRAVEL SERVICE, LTD., KENT TRAVEL SERVICE, INC., SOCIETE GENERALE and NATIONAL UNION FIRE INSURANCE COMPANY,

Defendants.

On Appeal from the New York Supreme Court, Appellate Division, First Department

JURISDICTIONAL STATEMENT AND APPENDIX FOR DEFENDANT-APPELLANT

OPINIONS AND ORDERS BELOW

No opinion was rendered by the Appellate Division, First Department of the Supreme Court of the State of New York with respect to either of the two appeals presented to it by Appellant Club Mediterranee, S.A., in connection with this litigation. Rather, the Appellate Division, First Department, affirmed the order of the Supreme Court of the State of New York, New York County (Parness, J.) by order entered April 26, 1983 (Appendix p. 1a). Similarly, the Appellate Division, First Department, denied Appellant Club Mediterranee, S.A. leave to appeal to the New York Court of Appeals from its April 26, 1983 order, by its second order entered June 28, 1983 (Appendix p. 3a).

The opinion and order of the Supreme Court of the State of New York, New York County (Parness, J.) appears in the appendix at page 5a.

This Court has previously had this matter before it in the form of a motion for stay, which was addressed by a single justice. Chief Justice Warren E. Burger, in response to such motion, entered an order on July 21, 1983, staying the orders of the New York state courts which would have compelled responses to the interrogatories in question (Appendix p. 17a). Chief Justice Burger's stay order remains in effect pending the final disposition of this appeal before this Court.

THE COURT'S JURISDICTIONAL GROUNDS

This is an appeal from a final order of the Appellate Division, First Department, of the Supreme Court of the State of New York, dated June 28, 1983, denying permission for leave to appeal to the New York Court of Appeals (the highest appellate court in the State of New York), from the order of the Appellate Division, First Department (dated April 26, 1983) which affirmed the

January 5, 1983 order of the Supreme Court of the State of New York, New York County (Parness, J.) compelling responses to certain interrogatories served on Appellant in violation of the provisions of a treaty existing between the United States and the Republic of France and, thus, in contravention of the Supremacy Clause of the Constitution of the United States as well as French Sovereignty and internal French law. The treaty in question is The Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, 28 U.S.C. Section 1781.

The order of the Appellate Division, First Department sought to be reviewed is dated April 26, 1983.

The statutory provisions believed to confer jurisdiction of the appeal as to this Court are 28 U.S.C. §1257(1), 28 U.S.C. §1257(2) and 28 U.S.C. §1257(3). A number of cases support exercise of this Court's jurisdiction.

This matter properly comes within this Court's appellate jurisdiction as this Court has "held consistently that a state statute is sustained within the meaning of §1257(2) when a state court holds it applicable to a particular set of facts as against the contention that such application is invalid on federal grounds," *Japan Line, Ltd. v. County of Los Angeles,* 441 U.S. 434, 441 (1979); *see, e.g., Cohen v. California,* 403 U.S. 15, 17-18 (1971), and state court rules have been explicitly held by this Court to be "statutes" within the meaning of §1257(2), *In re Griffiths,* 413 U.S. 717 (1973); *Mayer v. City of Chicago,* 404 U.S. 189 (1971); *Lathrop v. Donohue,* 367 U.S. 820, 824-25 (1961). Moreover, there are specific instances of this Court exercising appellate jurisdiction over state court refusals to recognize treaties or where state courts had sustained their own laws when challenged as contravening treaties, *see, e.g., Burthe v. Davis,* 133 U.S. 514 (1890); *Worcester v. Georgia,* 6 Pet. 515 (1823).

The cases establishing the supremacy of treaties (and international laws) in relation to state laws are legion, *see, e.g., Takahashi v. Fish & Game Com'n.*, 344 U.S. 410 (1948); *Missouri v. Holland*, 252 U.S. 416 (1926); *The Paquete Habana*, 175 U.S. 677 (1900); *Hauenstein v. Lynham*, 100 U.S. 483, 488-90 (1880); *Gibbons v. Ogden*, 9 Wheat. 1 (1824); *Ware v. Hylton*, 3 Dall. 199 (1796), as are those indicating that dealings with foreign states (and particularly dealings which challenge foreign sovereignty) are matters exclusively within the province of the federal government, into which the states should not interject themselves. *Zschernig v. Miller*, 389 U.S. 429 (1978); *Banco Nacional de Cuba Sabbatino*, 376 U.S. 398 (1964); *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936). Finally, the cases also establish that, for purposes of the finality requirements of 28 U.S.C. §1257, the June 28, 1983 ruling of the Appellate Division, First Department is certainly a final judgment or decree, despite the fact that there will be further proceedings in the lower state courts. *Nebraska Press Ass'n v. Stuart*, 423 U.S. 1327, 1329 (1975) (Blackmun, J.); *Cox Broadcasting Co. v. Cohn*, 420 U.S. 469 (1974); *Mercantile Nat'l Bank v. Langdeau*, 371 U.S. 555 (1963); *Cohen v. Beneficial Indust. Loan Corp.*, 337 U.S. 541 (1949); *Forgay v. Conrad*, 6 How. 201 (1848).

CONSTITUTIONAL PROVISION, TREATY AND RULES INVOLVED

A. United States Constitution, Art. VI, cl. 2:

> This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding.

B. Treaty:

> Convention On the Taking of Evidence Abroad in Civil or Commercial Matters, 28 U.S.C. §1781 (Appendix pp. 19a-79a).

C. New York Civil Procedure Law and Rules:

> Sections 3130 and 3131 and Rules 3132-3134 inclusive (Appendix pp. 80a-87a).

STATEMENT OF THE CASE

Appellees filed this action, on or about February 23, 1982 in the New York Supreme Court, New York County (one of several trial courts of general jurisdiction in the State of New York) against Club Mediterranee, S.A. and others[1] for personal injuries allegedly

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1. Co-defendant parties include: Club Med, Inc., Celebrity Travel Service, Ltd., Kent Travel Service, Inc., Societe Generale and National Union Fire Insurance Company. None of these co-defendant parties, to the best of the

(Cont'd)

sustained by Marjorie Schlossberg Dorin while she was a guest at a Club Mediterranee, S.A. resort in the Republic of Haiti during the period between December 26, 1981 and January 2, 1982. Issue was joined on or about March 26, 1982.

Club Mediterranee, S.A. is a French corporation, duly existing pursuant and subject to the laws of France, including, but not limited to, those international treaties and conventions to which France is a signatory. Said Appellant is not incorporated anywhere within the United States nor does it maintain any offices in this country for the purpose of its ownership, operation and/or control of the resort in question. A subsidiary, Club Med, Inc., organized in Delaware and maintaining an office in New York City, serves as its sales agent in the United States.

On or about September 14, 1982, appellees' counsel served the set of interrogatories in question[2] directly upon the undersigned firm as counsel for Club Mediterranee, S.A. in clear contravention of the terms and requirements of the Convention on the Taking

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(Cont'd)
appellant's knowledge, has an interest in the subject matter of this appeal. However, service of copies of the notice of appeal and this jurisdictional statement and appendix has been made upon these co-defendant parties as well as upon appellees.

2. It should be noted that almost every interrogatory contains a request for the identification or description of allegedly relevant documents (Appendix pp. 97a-101a). Accordingly, appellee's discovery request will necessitate an internal document search and production by appellant *in France* in addition to the provision of written answers to the interrogatories themselves. Thus, the response to appellees' discovery request will be more complex than that which a routine response to interrogatories would normally entail. It should be further noted that for the purpose of clarity and abbreviation, the term "interrogatories" shall be used hereinafter to refer to *both* the interrogatories themselves as well as the document identification requests contained within such interrogatories.

of Evidence Abroad in Civil or Commercial Matters, 28 U.S.C. Section 1781; [1972] 23 U.S.T. 2555; T.I.A.S. No. 7444 (hereinafter referred to as the "Hague Evidence Convention"). The United States and France are parties to the Hague Evidence Convention. This international treaty, as its name implies, was adopted specifically for the purpose of regulating and administering the process of taking evidence in civil cases such as the one at bar.

On November 30, 1982, Appellant moved in Special Term, Part 8A of the Supreme Court of the State of New York, County of New York, pursuant to Rule 3133 of the New York Civil Procedure Law and Rules ("CPLR"), for an order striking appellees' interrogatories on the ground that, *inter alia,* such interrogatories violated both the Hague Evidence Convention and the Supremacy Clause of the Constitution of the United States. Appellant also alleged that the interrogatories contravened the civil and criminal law of the French Republic, thus violating international law and principles of international comity.

At all times, Club Mediterranee, S.A. has adhered to the position that it did not seek to avoid compliance with whatever proper discovery requests may be contained within the propounded interrogatories, but rather it sought only that the provisions of the Hague Evidence Convention and of French law be observed.

On January 5, 1983, the Court, per Honorable Stanley Parness, Justice, granted Appellant's motion to the extent that interrogatories numbers 8, 9, 12 and 13(d) were stricken on other legal grounds, but held that the Appellant's "contention that service of the interrogatories is barred by the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters of March 13, 1970, is without merit . . . [because] the Hague Convention proscribes the taking of evidence by the two methods set forth therein only in *French Territory* (emphasis by Court) . . ." (Appendix p. 6a).

On or about February 1, 1983, Appellant filed its notice of appeal of Justice Parness' order with the Appellate Division, First Department of the New York Supreme Court. Thereafter, on or about April 26, 1983, the Appellate Division affirmed Justice Parness' order without opinion (Appendix p. 1a).

Appellant then moved the Appellate Division, on June 9, 1983, for an order pursuant to CPLR Section 5602(b)(1), granting leave to Appellant Club Mediterranee, S.A. to appeal to the Court of Appeals (the highest appellate court of the State of New York) from the order of the Appellate Division, on the grounds that the aforesaid order: (1) was erroneous as a matter of law and (2) directly contravened superseding federal and international law. In addition, Club Mediterranee, S.A. sought the certification of the following questions of law as decisive in the determination by the Appellate Division and as presenting issues which merit review by the Court of Appeals:

1. Are the provisions of the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (hereinafter, Hague Evidence Convention), 28 U.S.C. Section 1781, applicable to pre-trial discovery proceedings in a New York State Supreme Court action involving a French corporation as a party defendant?

2. Do the provisions of the Hague Evidence Convention, which as been formally adopted and enacted by the governments of the United States and France, supersede conflicting New York State procedural law in the administration of a civil case in this State?

3. Are the courts of the State barred, pursuant to the mandates of international law and comity, from compelling a French domiliary to violate the penal laws of France by disclosing information through pre-trial discovery procedures which contravene the requirements of the Hague Evidence Convention? (Appendix pp. 103a-104a).

In the alternative, a request was made for "a stay pending a disposition of the issues herein by the United States Supreme Court in the case of *Volkswagenwerk, A.G. v. Falzone,*" *appeal docketed* No. 82-1888 (May 20, 1983). [*See* specifically pp. 9-10 of the affirmation of Robert Stein, Esq. in support of Appellant's motion for leave to appeal (Appendix p. 112a)]. Such motion was the only avenue of recourse open to Appellant, who could *not* as a matter of state law either appeal as of right to the New York Court of Appeals or move in the Court of Appeals itself for leave to be heard by that Court. *See* New York CPLR Sections 5601 and 5602(a) (Appendix pp. 83a-87a).

On June 28, 1983, the Appellate Division denied such leave to appeal without opinion (Appendix p. 3a). Accordingly, Appellant has exhausted all possible state court procedures and must take its appeal to the Supreme Court of the United States.

On July 1, 1983, counsel for appellees served Appellant a demand by letter which called for complete compliance with the interrogatories and document identification requests within a forty-eight hour period of time. While the efficacy of this demand is open to question,[3] Appellant was subjected to further motion practice by the plaintiffs-appellees. On July 13, 1983, appellees served a motion in the Supreme Court of the State of New York, County of New York, for an order striking the answer of Appellant

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3. CPLR Rule 3133(b) provides that "The answer to any interrogatory to which objection is made shall be deferred until the objections are ruled on by the court". Inasmuch as Justice Parness' original order provided that the answers to the interrogatories in question would be due twenty days after the service of his order upon appellant, and such order was not modified by the Appellate Division, First Department, it was the position of the appellant that it must answer the interrogatories within twenty days from the date that the Appellate Division denied leave to appeal to the Court of Appeals, to wit: July 18, 1983.

by reason of its failure to respond to those interrogatories not stricken by prior court order.

On July 15, 1983 Appellant made an application before the Honorable Thurgood Marshall, Associate Justice of the United States Supreme Court, for a stay of Justice Parness' order compelling responses to the interrogatories in question, pending this appeal. The matter was referred to Chief Justice Warren E. Burger and on July 21, 1983, Chief Justice Burger granted such stay (Appendix p. 17a).

Thus, at every stage, the question sought to be reviewed was timely raised.

There has been a final ruling of the Appellate Division, First Department of the Supreme Court of the State of New York that the provisions of the New York CPLR, as applied in this matter, take precedence over both a treaty between the United States and the Republic of France and the Supremacy Clause of the United States Constitution.

Specifically, the Judge Parness order, as sustained by the Appellate Division's refusal to reverse or permit Appellant to appeal, would require Appellant to conduct an internal document research and to provide certain information possessed by French nationals whom are employees of Appellant in France in response to interrogatories, pursuant to the New York CPLR rather than pursuant to letters rogatory as required by the Hague Convention.

Appellant contends that these procedures, are inconsistent with, and therefore violative of, the Hague Convention and the reservations included in the treaty by the Republic of France.

There are two methods of taking evidence under the Hague Convention: "Letters of Request" as set forth in Chapter I and "Taking of Evidence By Diplomatic Officers, Consular Agents

and Commissioners" in Chapter II. These modes of obtaining evidence are the only available means under the Convention for obtaining evidence of French nationals on French soil. Thus compliance with such modes is necessary in order to obtain any information. A review of the procedures for letters of request in Chapter I (Appendix pp. 19a-25a) clearly establishes that magistrates of the "Central Authority of the Contracting States" are the persons who perform the function of gathering the requested information — not American lawyers serving American-style interrogatories. (Appellees have been repeatedly advised of this procedure but have steadfastly refused to proceed in accordance with it.) Obviously, activities such as those order by the New York courts herein clearly violate French sovereignty and the French Criminal Code.

The opposition of the French Republic to the proposed interrogatories ordered by the New York State courts is made clear in a letter of the French Ministry of Justice, dated March 9, 1981, to James G. Hergen, Esq. of the Office of Foreign Litigation, United States Department of Justice, discussing Law No. 80-538 of July 16, 1980 which makes compliance with certain pre-trial discovery requests (such as the interrogatories at bar) a criminal offense under French Penal Law.[4] Such letter is reproduced here in full (*See also:* Appendix pp. 93a-96a):

> Ministry of Justice
> 13, Place Vendome

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4. Law No. 80-538 of July 16, 1980, as translated in Parker School Studies in Foreign and Comparative Law, Columbia University, *French Law: Constitution and Selective Legislation*, 8-49 to 50 (1981) is found at pages 88a-90a of the appendix. The original version, Appendice au Code de Commerce, Petis Codes Dalloz (Soizante-seizieme ed. 1980-81) is found at pages 91a-92a of the appendix.

The Director of Civil Affairs and The Sea

Paris, March 9, 1981

Mr. James G. Hergen
Attorney, Office of Foreign Litigation
Civil Division
Department of Justice
Washington, D.C., U.S.A.

Sir:

You have requested my department's opinion on the scope and significance of the law of July 16, 1980, amending the Law of July 25, 1968, concerning the disclosure of documents and information of an economic, commercial, industrial, financial, or technical nature to foreign natural or juristic persons. You have requested specific information regarding any effects this law may have on the implementation of The Hague Convention of 1970 on the taking of evidence abroad in civil or commercial matters, to which France and the United States are parties, as well as persons liable to incur the penalties stipulated by the law following violation of the provisions of its Article 1 bis.

I have the honor to inform you that Article 1 bis of the Law of July 15, 1980, amending the Law of July 2, 1968, is intended to ensure the enforcement in French territory of the regulations on the taking of evidence abroad as they are established in civil and commercial matters in France's relation with the United States by the

provision of The Hague Convention of March 18, 1970, together with the declarations and reservation made by the French government, taking the provisions of the French Code of Civil Procedure into consideration.

In accordance with the terms of these regulations, the only two methods of investigation in French territory that may be ordered by foreign legal authorities, subject to the conditions established by these instruments, are letters of request [*] and taking of evidence by diplomatic officers, consular agents, and commissioners (Chapters I and II of The Hague Convention of March 18, 1970, and Articles 755 et seq of the new French Code of Civil Procedure).

[*This term is used in the Hague Convention of March 18, 1970; the usual term is letters rogatory.]

Notwithstanding the agreement between the parties, Article 1 bis of the Law of July 1, 1980 prevents recourse in French territory to any other methods of investigation or procedure for taking of evidence that is considered unlawful, particularly recourse to requests for direct disclosure of documents or information.

Moreover, Article 1 bis makes it possible to punish violations of the conditions established in The Hague Convention and in the declaration which the French government made at the time of ratification of this instrument for the execution of letters of request and the taking of evidence by commissioners. Notwithstanding the agreement

between the parties, the law thereby makes it possible to prevent recourse to evidence taken by commissioners without prior authorization by my department.

It should be emphasized that the information communicated to you on the scope and significance of the law of July 15, 1980, concerns only the relations of judicial cooperation between our two countries in civil and commercial matters. My department had an opportunity to clarify these different points in its reply to a question in writing from Mr. Chinaud, a deputy, of which a copy is enclosed.

I also have the honor to inform you that the penalties stipulated by the Law apply irrespective of the status, nationality, or domicile of the person concerned.

Therefore the Law of July 15, 1980, has given full effect to our relation of judicial cooperation by assuring improved implementation of the provisions of The Hague Convention of March 18, 1970 and by enabling American litigants to obtain evidence in France, by methods that are in conformity with the international commitments of our two countries, for use in judicial proceedings in the United States.

If there is no objection, I would be grateful if you would inform the judicial authorities and legal practitioners of your country of this opinion.

Naturally, I would be willing to furnish any additional information. I am enclosing a copy of the legislative history of this law.

Very truly yours,

[Signature]
Renaud Deneix de Saint Marc

Throughout the various stages of these proceedings, the appellees have continued to obfuscate the primary issue. They appear to fault the clearly applicable treaty procedures as somehow being obstructive, unfair or even discretionary while they have not even attempted to comply with them, let alone to exhaust their remedies under the Hague Evidence Convention. They complain of allegedly delayed discovery but have refused, since the inception of the litigation, to expedite their needs in accordance with the sanctioned treaty methods. They urge the invalidity of applicable procedures which would request the cooperation of responsible French authorities although analogous procedures are well known in our own jurisprudence, *see, e.g.* letters rogatory under Rule 28(b) of the Federal Rules of Civil Procedure, a procedural device contemplating request for assistance from foreign authorities.

THE QUESTION IS SUBSTANTIAL

This case presents an unusual and significant question of first impression concerning the constitutionality of a state court discovery order that purports to compel French nationals to submit to New York discovery procedures in France; procedures that French law does not recognize and that are violative of treaty rights and of international comity. The issue of whether the order violates the procedures for judicial assistance set forth in the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, a treaty in force between the French Republic

and the United States of America, is both novel and substantial. For a state court judge to be permitted to ignore the mandates of an applicable treaty in violation of the Supremacy Clause of the United States Constitution and the judicial sovereignty of the French Republic would indeed be extraordinary.

The fundamental law that orders relations between these separate nations is customary international law, as well as treaties and other agreements to which they are parties, including the Charter of the United Nations.[5] On the international level, every intrusion by a court of one nation into what may be regarded as the sovereign domain of a foreign nation cannot avoid creating a political strain in the relations of the nations concerned.

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5. The basic treaty provisions requiring respect for the French Republic as a sovereign and equal and protection of the rights and interest of a French nationals and companies are set forth in the Charter of the United Nations, June 25, 1945, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153.

The first mandatory Principle of the Charter is the "sovereign equality" of all U.N. members (Art. 2, para. 1). The United Nations General Assembly has declared, without dissent, that the principle of sovereign equality of States includes *inter alia*, the following elements.

> "(a) States are juridically equal;
>
> (b) Each State enjoys the rights herein in full sovereignty;
>
> (c) Each State has the duty to respect the personality of other States;
>
> (d) The territorial integrity and political independence of the State are invoilable;. . ."

Declaration on Principles of Internal Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 28) at 121, U.N. Doc. A/8028 (1970).

It is, of course, open to any government to disagree with another and act firmly on its own convictions. But that is a political, not a judicial, decision. Absent a reasonably clear command by the competent political authorities, it is not the office of courts to be on the leading edge of international conflict involving the exercise of jurisdiction by one state in the territory of another.

The French Republic is a civil law state. Civil law states the position that, in general, the gathering of evidence within the state for civil litigation is an exercise of "judicial sovereignty" entrusted exclusively to the courts and that any encroachment of this function by the court or citizens of any foreign state may be regarded as a violation of France's "judicial sovereignty."[6]

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6. The Report of the United States Delegation (of leading experts in the field) to the Eleventh Session of the Hague Conference on Private International Law which prepared the Hague Evidence Convention on the initiative of the United States, contains the following observations in this regard [8 Int. L. Mat. ("U.S. Report") 785, 804, 806 (1969)]:

> "In drafting the Convention, the doctrine of 'judicial sovereignty' had to be constantly borne in mind. Unlike the common-law practice, which places upon the parties to the litigation the duty of privately securing and presenting the evidence at the trial, the civil law considers obtaining of evidence a matter primarily for the courts, with the parties in the subordinate position of assisting the judicial authorities.
>
> > The act of taking evidence in a common-law country from a willing witness, without compulsion and without a breach of the peace, in aid of a foreign proceeding, is a purely private matter in which the host country has no interest and in which its judicial authorities have normally no wish to participate. To the contrary, the same act in a civil law country may be a public matter, and may constitute the performance of a public

(Cont'd)

The difference between civil law and common law countries in this regard is well recognized. (*See* 4 Moore's Federal Practice, Sec. 28.05.)[7] The Hague Convention was the culmination of efforts

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(Cont'd)

> judicial act by an unauthorized foreign person. It may violate the 'judicial sovereignty' of the host country unless its authorities participate or give their consent. This civil law approach has a direct bearing upon choice among the three general methods of taking evidence abroad.
>
> First—the letter of request or 'commission rogatoire.' This is a truly 'judicial' act. The court of one State through appropriate channels, asks the court of another State to secure designated evidence for use at a trial in the requesting State. Here no 'sovereignty' problem exists because the evidence is taken through the judicial process of the requested State.
>
> Second—taking evidence by a diplomatic or consular requesting State. Diplomatic officers are infrequently employed for this purpose, but the use of consuls is well recognized within certain limits. Here there may be a 'sovereignty' question, as the State where the consult acts may object to his entering into 'judicial' activities on its territory in the absence of a consular convention authorizing him to do so.
>
> Third—the use of 'commissioners' nominated by the court of the State where the action is pending. Here the 'sovereignty' question is even more sharply raised. A commissioner acts as the extended arm of the court of the State which appoints him. In a State which follows the 'judicial sovereignty' concept, the activities of a foreign commissioner constitute an obvious intrusion by an agent of a foreign judicial 'sovereign'."

7. It is a crime in the Republic of France for a private person to perform a state function, such as the taking of evidence. *See* Letter of French Ministry of Justice, *supra*.

to set up a model system to bridge differences between the common law and civil law approaches to the taking of evidence abroad.

By ratifying the Hague Convention, the Republic of France has opened its doors to accommodate foreign litigants, but France, as it had a right to do under Article 35(d) of the treaty, specified certain limitations and qualifications to the Convention. Accordingly, the Republic of France has mandated that all discovery requests be channeled through a proper central judicial authority by means of a letter of request. This was not done in the instant case.

Although the important question at hand is an issue of first impression in this Court, the mandatory use by litigants of the Hague Convention's procedures for gathering evidence in foreign lands had been acknowledged by other courts. *See, e.g., Pain v. United Technologies Corp.*, 637 F. 2d 775 (D.C. Cir. 1980); *Federal Trade Commission v. Compagnie De Saint-Gobain-Pont-A-Mousson,* 636 F. 2d 1300, 1323 (D.C. Cir. 1980); *Volkswagenwerk Aktiengesellschaft v. Superior Court In And For Sacramento County,* 33 Cal. App. 3d 503, 109 Cal. Rptr. 219 (1973).

Aside from the fact that the execution of the order entered by the trial court in the instant case would result in a serious violation of French judicial sovereignty,[8] there is a compelling

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8. This case presents no element justifying an order ignoring the relevant French interests and policies. The rules regarding the taking of evidence in effect in France, while different from our own, are not unique; rather, they are characteristic of the European civil law system. Although there are inevitable differences on questions of when, how and in what form evidence may be taken, there is no suggestion that French rules are designed to frustrate the orderly collection of evidence in civil litigation, nor is there any evidence of hostility in French law or French courts to the underlying policies being advanced in negligence actions.

reason why the question raised by this appeal is manifestly substantial and calls for resolution in this Court.

The United States has entered into a treaty with the Republic of France providing a specific procedure to be used for the taking of evidence in France. Since the Hague Convention has been ratified by the United States and is a treaty, it constitutes the supreme law of the land. U.S. Const. Art. VI, cl. 2. As a treaty, the Hague Convention supersedes all inconsistent federal and state procedures and must be respected by the state courts under the Constitution of the United States.[9] A state court cannot add or take from the force and effect of such a treaty. *Hines v. Davidowitz,* 312 U.S. 52, 63 (1941), "Under the supremacy clause, it is indisputable that a valid treaty overrides any conflicting state law, even on matters otherwise within state control. Indeed, the treaty controls whether it is ratified before or after the enactment of the conflicting state law." (Citations omitted), Tribe, *American Constitutional Law* 168 (1978).

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9. U.S. Const. Art. VI. In its landmark decision in *Gibbons v. Ogden*, 9 Wheat. 1 (1824), this court stated,

> "The appropriate application of that part of the [supremacy] clause which confers the same supremacy on laws and treaties, is to such acts of the State Legislatures as do not transcend their powers, but, through enacted in the execution of acknowledged State powers, interefere with, or are contrary to the laws of Congress, made in pursuance of the constitution, or some treaty made under the authority of the United States. In each such case, the act of Congress, or the treaty, is supreme; and the law of the State, though enacted in the exercise of powers not controverted, must yield to it."

See also, Missouri v. Holland, 252 U.S. 415 (1920); *Ware v. Hylton*, 3 Dall. 199 (1796); *Hauenstein v. Lynham*, 100 U.S. 483 (1800); *Takahashi v. Fish & Game Commission*, 334 U.S. 410 (1948).

While procedures governing the taking of discovery are generally matters within state control, when such procedure are inconsistent with Hague Convention, they are invalid. As this Court has declared in *United States v. Belmont,* 301 U.S. 324 at 331: "[I]f a treaty does not supersede existing state laws, as far as they contravene its operation, the treaty would be ineffective." A duly ratified treaty is unmodifiable for any reason, including "equity, general inconvenience or substantial justice." *United States v. Choctaw Nation,* 179 U.S. 494 (1900). Indeed the states are devoid of power to retard, impede, burden or in any way measure or control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government. *Nash v. Florida Industrial Commission,* 389 U.S. 235, 240 (1967). State law must yield when it is inconsistent with or impairs the policy or provisions of a treaty or of an international compact or agreement. *United States v. Pink,* 315 U.S. 203, 230-231 (1942). Accordingly, a litigant acting under authority of the courts of the State of New York, cannot constitutionally take actions inconsistent with, and contrary to, the Hague Convention.

The crux of the present controversy is that a New York state court judge, without correction by the New York appellate courts, has construed the court rules of the state as superseding a federal treaty. This in spite of the fact that the power to deal with sovereign states is something that reposes in the federal government exclusively; a power that antedates the American Constitution's adoption. *United States v. Curtiss-Wright Export Corp.,* 299 U.S. 304.

The failure of the state court in the instant case to apply a treaty of the United States, as well as its elevation of the New York Civil Practice Law and Rules over that treaty in contravention of the United States Constitution and of the fundamental principles of international law, international relations

and comity, gives rise to a highly significant constitutional issue bearing upon federal-state relations. The application and interpretation of a treaty, in this case the Hague Convention, presents a uniquely federal question which should be resolved by this Court. *The Paquete Habana,* 175 U.S. 677 (1900).

Throughout the history of this matter, the New York courts have been intransigent in their view that the provisions of the New York Civil Practice Law and Rules must prevail throughout the world. It would be availing to suggest that the apparently flagrant and deliberate flaunting of the Supremacy Clause of Article VI of the Constitution is not a substantial issue for this Court's consideration and decision. Further, the rights and duties of the contracting nations to a treaty to which the United States is a signatory cannot be overridden by the stubborn insistence of the New York courts that their rules and procedures universally prevail despite both the sovereignty and the criminal code of the country in which the New York compulsion is to be exercised.

It is respectfully submitted that the question here presented is so substantial as to require plenary consideration, with briefs on the merits and oral argument for their resolution. Appellant would also request, in the alternative, that should the Court not consider this appeal the appropriate mode of review, it consider and act upon these papers as a petition for certiorari.[10]

REQUEST FOR CONSOLIDATION OF REVIEW

Inasmuch as Appellant believes that the exact issue to be decided has already been placed on this Court's docket in the

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10. The Court can treat this matter pursuant to 28 U.S.C. §2103, as a petition for statutory certiorari under 28 U.S.C. §1257(3) or for common law certiorari or other appropriate writ under the All Writs Act, 28 U.S.C. §1651 pursuant to 28 U.S.C. §2103.

case of *Volkswagenwerk A.G. v. Falzone, appeal docketed* No. 82-1888 (May 20, 1983), it is respectfully suggested that, for the sake of judicial economy and good order, Appellant's appeal be coupled with, heard and considered at the same time as and in conjunction with that case.

CONCLUSION

It is respectfully submitted that with respect to this appeal, probable jurisdiction should be noted.

Dated: New York, New York
September 15, 1983

Respectfully submitted,

SOL KROLL

KROLL, POMERANTZ
& CAMERON
Attorneys for Defendant-Appellant
Counsel of Record

SOL KROLL
RAYMOND L. MYLOTT, JR.
Of Counsel

APPENDIX

ORDER OF THE APPELLATE DIVISION, FIRST DEPARTMENT, OF THE SUPREME COURT OF THE STATE OF NEW YORK AFFIRMING THE ORDER OF THE SUPREME COURT OF THE STATE OF NEW YORK, NEW YORK COUNTY (PARNESS, J.), COMPELLING RESPONSES BY CLUB MEDITERRANEE, S.A. TO INTERROGATORIES, DATED APRIL 26, 1983

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on April 26, 1983

Present—Hon. Joseph P. Sullivan, Justice Presiding
David Ross
Arnold L. Fein
E. Leo Milonas
Bentley Kassal Justices

MARJORIE SCHLOSSBERG DORIN and PHILIP DORIN,
Plaintiffs-Respondents,

-against-

CLUB MEDITERRANEE, S.A.,
Defendant-Appellant

CLUB MED, INC., CELEBRITY TRAVEL SERVICE, LTD., KENT TRAVEL SERVICE, INC., SOCIETE GENERALE and NATIONAL UNION FIRE INSURANCE,
Defendants

16526N

Order Dated April 26, 1983

An appeal having been taken to this Court by the above-named appellant from an order of the Supreme Court, New York County (Parness, J.), entered on January 5, 1983, which granted defendant-appellant's motion for a protective order striking plaintiffs' interrogatories only to the extent of striking interrogatories 8, 9, 12 and 13(d),

And said appeal having been argued by Robert Stein of counsel for appellant, and by Thomas A. Dickerson of counsel for respondents; and due deliberation having been had thereon,

It is unanimously ordered that the order so appealed from be and the same is hereby affirmed. Respondents shall recover of appellant $50 costs and disbursements of this appeal.

ENTER:

JOSEPH J. LUCCHI
Clerk

ORDER OF THE APPELLATE DIVISION, FIRST DEPARTMENT OF THE SUPREME COURT OF THE STATE OF NEW YORK DENYING CLUB MEDITERRANEE S.A.'s APPLICATION FOR LEAVE TO APPEAL TO THE COURT OF APPEALS OF THE STATE OF NEW YORK DATED JUNE 28, 1983

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on June 28, 1983.

Present—Hon. Joseph P. Sullivan Justice Presiding,
David Ross,
Arnold L. Fein,
E. Leo Milonas
Bentley Kassal, Justices

Marjorie Schlossberg Dorin and Philip Dorin,
Plaintiffs-Respondents

-against-

Club Mediterranee S.A.,
Defendant-Appellant

-and-

Club Med, Inc., Celebrity Travel Service, Ltd.,
Ken Travel Service, Inc., Societe Generale
and National Union Fire Insurance,
Defendants.

M-2757

The above-named defendant-appellant having moved for leave to appeal to the Court of Appeals from the order of this Court entered on April 26, 1983,

Order Dated June 28, 1983

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the papers filed in support of said motion, and the papers filed in opposition or in relation thereto; and due deliberation having been had thereon,

It is ordered that said motion be and the same hereby is denied with $20 costs.

ENTER:

JOSEPH J. LUCCHI
Clerk.

ORDER OF THE SUPREME COURT OF THE STATE OF NEW YORK, NEW YORK COUNTY (PARNESS J.), COMPELLING RESPONSES BY CLUB MEDITERRANEE TO INTERROGATORIES DATED JANUARY 5, 1983

SUPREME COURT OF THE STATE OF NEW YORK,
SPECIAL TERM, PART IA, NEW YORK COUNTY

at the Courthouse thereof, 60 Centre Street, New York, New York, 10007.

Present:

Hon. S. PARNESS, Justice.

MARJORIE SCHLOSSBERG DORIN ano.

-against-

CLUB MEDITERRANEE, S.A. et al.

The following papers numbered 1 to 4 read on this motion:

No. 66 on Calendar of Dec. 1982	PAPERS NUMBERED
Notice of Motion - Order to Show Cause and Affidavits Annexed	1 - 2
Answering Affidavit	3 - 4

Upon the foregoing papers this Motion by defendant Club Mediterranee, S.A. for a protective order striking plaintiffs' interrogatories dated September 14, 1982, is granted to the extent of striking interrogatories 8 (irrelevant), 9 (overbroad and improper combination of various questions), 12 (improper form and improper combination of various questions), and 13(d) (irrelevant).

Order Dated January 5, 1983

The movant's contention that service of the interrogatories is barred by the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters of March 13, 1970, is without merit. Movant has not denied that it does business in this state or pleaded otherwise and even though movant was organized and exists under French Law, the Hague Convention proscribes the taking of evidence by the two methods set forth therein only in *French Territory* (emphasis by court), see exhibit D, movant's memorandum of law, translated letter from the Ministry of Justice of France dated March 9, 1981, to the United States Department of Justice.

The time for the movant to serve answers to the interrogatories, as modified, is extended twenty (20) days after service of this order upon the movant.

Dated Jan. 5, 1983 s/ SP J.S.C.

County Clerk's No. 4777, 1982
Liber D 174, Line 6, 1982

Entered 1-5-83

FINAL JUDGMENT OR DECREE OF THE APPELLATE DIVISION, FIRST DEPARTMENT OF THE SUPREME COURT OF THE STATE OF NEW YORK AFFIRMING THE ORDER OF THE SUPREME COURT OF THE STATE OF NEW YORK, NEW YORK COUNTY (PARNESS, J.), COMPELLING RESPONSES BY CLUB MEDITERRANEE, S.A. TO INTERROGATORIES

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on April 26, 1983

Present — Hon. Joseph P. Sullivan, Justice Presiding
David Ross
Arnold L. Fein
E. Leo Milonas
Bentley Kassal, Justices.

16526N

MARJORIE SCHLOSSBERG DORIN and PHILIP DORIN,

Plaintiffs-Respondents,

-against-

CLUB MEDITERRANEE, S.A.,

Defendant-Appellant,

-and-

Final Judgment or Decree

CLUB MED, INC., CELEBRITY TRAVEL SERVICE, LTD., KENT TRAVEL SERVICE, INC., SOCIETE GENERALE and NATIONAL UNION FIRE INSURANCE,

Defendants.

An appeal having been taken to this Court by the above-named appellant from an order of the Supreme Court, New York County (Parness, J.), entered on January 5, 1983, which granted defendant-appellant's motion for a protective order striking plaintiffs' interrogatories only to the extent of striking interrogatories 8, 9, 12 and 13(d),

And said appeal having been argued by Robert Stein of counsel for appellant, and by Thomas A. Dickerson of counsel for respondents; and due deliberation having been had thereon,

It is unanimously ordered that the order so appealed from be and the same is hereby affirmed. Respondents shall recover of appellant $50 costs and disbursements of this appeal.

ENTER:

JOSEPH J. LUCCHI
Clerk.

NOTICE OF APPEAL FILED WITH THE APPELLATE DIVISION, FIRST DEPARTMENT OF THE SUPREME COURT OF THE STATE OF NEW YORK DATED AND TIME-STAMPED JULY 21, 1983

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FIRST DEPARTMENT

Index No.: 4777/82

MARJORIE SCHLOSSBERG DORIN and PHILIP DORIN,

Plaintiffs/Appellees,

vs.

CLUB MEDITERRANEE, S.A., a Foreign Corporation,

Defendant/Appellant.

and

CLUB MED, INC., CELEBRITY TRAVEL SERVICE, LTD., KENT TRAVEL SERVICE, INC., SOCIETE GENERALE and NATIONAL UNION FIRE INSURANCE COMPANY,

Defendants.

NOTICE IS HEREBY GIVEN that CLUB MEDITERRANEE, S.A., the Appellant above-named, hereby appeals to the Supreme Court of the United States from the final judgment of the Appellate Division, First Department of the Supreme Court of the State of New York, entered in this action on June 28, 1983, by which it denied leave to Appellant CLUB MEDITERRANEE, S.A. to appeal to the Court of Appeals of

Notice of Appeal Dated July 21, 1983

the State of New York; thus letting stand its Order, entered in this action on April 26, 1983, affirming the Order of the Honorable Stanley Parness, Justice of the Supreme Court of the State of New York, entered in this action on January 5, 1983, compelling Appellant CLUB MEDITERRANEE, S.A. to respond to certain interrogatories served upon Appellant in contravention of the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, 28 U.S.C. Section 1781; [1972] 23 U.S.T. 2555; T.I.A.S. No. 7444.

This appeal is taken pursuant to 28 U.S.C. Section 1257(1).

KROLL, POMERANTZ
& CAMERON
Attorneys for Defendant/
Appellant
CLUB MEDITERRANEE, S.A.
and Defendants
CLUB MED, INC. and
SOCIETE GENERALE
500 Fifth Avenue
New York, New York 10110
(212) 921-9080

Notice of Appeal Dated July 21, 1983

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

RAYMOND L. MYLOTT, JR., ESQ., being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 231 East 76th Street, Apt. 7-H, New York, New York 10021.

That on the 20th day of July, 1983, deponent served the within NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES upon:

THOMAS A. DICKERSON, ESQ.
Attorney for Plaintiffs-Respondents
MARJORIE SCHLOSSBERG DORIN
and PHILIP DORIN
545 Fifth Avenue
New York, New York 10017

D'AMATO & LYNCH
Attorneys for Defendant
KENT TRAVEL SERVICE, INC.
70 Pine Street
New York, New York 10005

McCORMICK, DUNNE & FOLEY
Attorneys for Defendant
NATIONAL UNION FIRE INSURANCE COMPANY
71 Broadway
New York, New York 10006

Notice of Appeal Dated July 21, 1983

FEDER, KASZOVITZ, WEBER & SKALA
Attorneys for Defendant
CELEBRITY TRAVEL SERVICE, LTD.
420 Seventh Avenue
New York, New York 10123

in this action at the address designated by said attorney for that purpose by depositing same enclosed in a post paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.

s/ Raymond L. Mylott, Jr.
RAYMOND L. MYLOTT, JR.

Sworn to before me this
20th day of July, 1983

Notary Public

NOTICE OF APPEAL FILED WITH THE SUPREME COURT OF THE STATE OF NEW YORK, NEW YORK COUNTY, PURSUANT TO R.10.3 AS BEING THE COURT POSSESSED OF THE RECORD, DATED AND TIME-STAMPED JULY 21, 1983

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FIRST DEPARTMENT

Index No. 4777/82

MAJORIE SCHLOSSBERG DORIN and PHILIP DORIN,

Plaintiffs/Appellees,

vs.

CLUB MEDITERRANEE, S.A., a Foreign Corporation,

Defendant/Appellant.

and

CLUB MED, INC., CELEBRITY TRAVEL SERVICE, LTD., KENT TRAVEL SERVICE, INC., SOCIETE GENERALE and NATIONAL UNION FIRE INSURANCE COMPANY,

Defendants.

NOTICE IS HEREBY GIVEN that CLUB MEDITERRANEE, S.A., the Appellant above-named, hereby appeals to the Supreme Court of the United States from the final

Notice of Appeal Pursuant to R.10.3 Dated July 21, 1983

judgment of the Appellate Division, First Department of the Supreme Court of the State of New York, entered in this action on June 28, 1983, by which it denied leave to Appellant CLUB MEDITERRANEE, S.A. to appeal to the Court of Appeals of the State of New York; thus letting stand its Order, entered in this action on April 26, 1983, affirming the Order of the Honorable Stanley Parness, Justice of the Supreme Court of the State of New York, entered in this action on January 5, 1983, compelling Appellant CLUB MEDITERRANEE, S.A. to respond to certain interrogatories served upon Appellant in contravention of the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, 28 U.S.C. Section 1781; [1972] 23 U.S.T. 2555; T.I.A.S. No. 7444.

This appeal is taken pursuant to 28 U.S.C. Section 1257(1).

KROLL, POMERANTZ &
CAMERON
Attorneys for Defendant/Appellant
CLUB MEDITERRANEE, S.A.
and Defendants
CLUB MED, INC. and
SOCIETE GENERALE
500 Fifth Avenue
New York, New York 10110
(212) 921-9080

Notice of Appeal Pursuant to R.10.3 Dated July 21, 1983

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

RAYMOND L. MYLOTT, JR., ESQ., being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 231 East 76th Street, Apt. 7-H, New York, New York 10021.

That on the 20th day of July, 1983, deponent served the within NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES upon:

THOMAS A. DICKERSON, ESQ.
Attorney for Plaintiffs-Respondents
MARJORIE SCHLOSSBERG DORIN
and PHILIP DORIN
545 Fifth Avenue
New York, New York 10017

D'AMATO & LYNCH
Attorneys for Defendant
KENT TRAVEL SERVICE, INC.
70 Pine Street
New York, New York 10005

McCORMICK, DUNNE & FOLEY
Attorneys for Defendant
NATIONAL UNION FIRE INSURANCE COMPANY
71 Broadway
New York, New York 10006

Notice of Appeal Pursuant to R.10.3 Dated July 21, 1983

FEDER, KASZOVITZ, WEBER & SKALA
Attorneys for Defendant
CELEBRITY TRAVEL SERVICE, LTD.
420 Seventh Avenue
New York, New York 10123

in this action at the address designated by said attorney for that purpose by depositing same enclosed in a post paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.

s/ Raymond L. Mylott, Jr.
RAYMOND L. MYLOTT, JR.

Sworn to before me this
20th day of July, 1983

Notary Public

ORDER STAYING DISCOVERY PROCEEDINGS ENTERED BY CHIEF JUSTICE WARREN E. BURGER, DATED JULY 21, 1983

SUPREME COURT OF THE UNITED STATES

No. A-28

CLUB MEDITERRANEE, S.A.,

Appellant,

v.

MAJORIE SCHLOSSBERG DORIN and PHILIP DORIN

UPON CONSIDERATION of the application of counsel for the appellant,

IT IS ORDERED that the effectiveness of the order of the Appellate Division of the Supreme Court of New York, First Judicial Department, case No. 16526 N, entered April 26, 1983, be, and the same is hereby, stayed pending the timely docketing of an appeal in the above-entitled cause. Should such an appeal be so timely docketed, this order is to continue pending this Court's action on the jurisdictional statement. If the appeal is dismissed or the judgment of the Appellate Division of the Supreme Court of New York is affirmed, this order is to terminate automatically. In the event that jurisdiction is noted or postponed, this order is to remain in effect pending the issuance of the mandate of this Court.

Chief Justice of the United States

Dated this 21st
day of July, 1983

CONSTITUTIONAL, TREATY AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Art. VI, cl. 2

This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding.

FULL TEXT OF CONVENTION ON TAKING EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS, 28 U.S.C. §1781, [1972] 23 U.S.T. 2555, T.I.A.S. 7444 WITH RESERVATIONS, DECLARATIONS, AND EXCEPTIONS FILED BY THE REPUBLIC OF FRANCE

CONVENTION ON TAKING OF EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS

The States signatory to the present Convention.

Desiring to facilitate the transmission and execution of Letters of Request and to further the accommodation of the different methods which they use for this purpose.

Desiring to improve mutual judicial co-operation in civil or commercial matters.

Have resolved to conclude a Convention to this effect and have agreed upon the following provisions—

CHAPTER I—LETTERS OF REQUEST

Article 1

In civil or commercial matters a judicial authority of a Contracting State may, in accordance with the provisions of the law of that State, request the competent authority of another Contracting State, by means of a Letter of Request, to obtain evidence, or to perform some other judicial act.

A Letter shall not be used to obtain evidence which is not intended for use in judicial proceedings, commenced or contemplated.

The expression 'other judicial act' does not cover the service of judicial documents or the issuance of any process by which judgments or orders are executed or enforced, or orders for provisional or protective measures.

Full Text of Convention on Taking Evidence Abroad in Civil or Commercial Matters

Article 2

A Contracting State shall designate a Central Authority which will undertake to receive Letters of Request coming from a judicial authority of another Contracting State and to transmit them to the authority competent to execute them. Each state shall organize the Central Authority in accordance with its own law.

Letters shall be sent to the Central Authority of the State of execution without being transmitted through any other authority of that State.

Article 3

A Letter of Request shall specify—

(a) the authority requesting its execution and the authority requested to execute it, if known to the requesting authority;

(b) the names and addresses of the parties to the proceedings and their representatives, if any;

(c) the nature of the proceedings for which the evidence is required, giving all necessary information in regard thereto;

(d) the evidence to be obtained or other judicial acts to be performed.

Where appropriate, the Letter shall specify, inter alia—

(e) the names and addresses of the persons to be examined;

(f) the questions to be put to the persons to be examined or a statement of the subject-matter about which they are to be examined;

(g) the documents or other property, real or personal, to be inspected;

(h) any requirement that the evidence is to be given an oath or affirmation, and any special form to be used;

(i) any special method or procedure to be followed under Article 9.

A Letter may also mention any information necessary for the application of Article 11.

No legislation or other like formality may be required.

Article 4

A Letter of Request shall be in the language of the authority requested to execute it or be accompanied by a translation into that language.

Nevertheless, a Contracting State shall accept a Letter in either English or French, or a translation into one of these languages, unless it has made the reservation authorized by Article 33.

A Contracting State which has more than one official language and cannot, for reasons of internal law, accept Letters in one of these languages for the whole of its territory, shall, by declaration, specify the language in which the Letter or translation thereof shall be expressed for execution in the specified parts of its territory. In case of failure to comply with this declaration, without justifiable excuse, the costs of translation into the required language shall be borne by the State of origin.

A Contracting State may, by declaration, specify the language or languages other than those referred to in the preceding paragraphs, in which a Letter may be sent to its Central Authority.

Any translation accompanying a Letter shall be certified as correct, either by a diplomatic officer or consular agent or by a sworn translator or by any other person so authorized in either State.

Article 5

If the Central Authority considers that the request does not comply with the provisions of the present Convention, it shall

promptly inform the authority of the State of origin which transmitted the Letter of Request, specifying the objections to the Letter.

Article 6

If the authority to whom a Letter of Request has been transmitted is not competent to execute it, the Letter shall be sent forthwith to the authority in the same State which is competent to execute it in accordance with the provisions of its own law.

Article 7

The requesting authority shall, if it so desires, be informed of the time when, and the place where, the proceedings will take place, in order that the parties concerned, and their representatives, if any, may be present. This information shall be sent directly to the parties or their representatives when the authority of the State of origin so requests.

Article 8

A Contracting State may declare that members of the judicial personnel of the requesting authority of another Contracting State may be present at the execution of a Letter of Request. Prior authorization by the competent authority designated by the declaring State may be required.

Article 9

The judicial authority which executes a Letter of Request shall apply its own law as to the methods and procedures to be followed.

However, it will follow a request of the requesting authority that a special method or procedure be followed, unless this is incompatible with the internal law of the State of execution or is impossible of performance by reason of its internal practice and procedure or by reason of practical difficulties.

A Letter of Request shall be executed expeditiously.

Article 10

In executing a Letter of Request the requested authority shall apply the appropriate measures of compulsion in the instances and to the same extent as are provided by its internal law for the execution of orders issued by the authorities of its own country or of requests made by parties in internal proceedings.

Article 11

In the execution of a Letter of Request the person concerned may refuse to give evidence in so far as he has a privilege or duty to refuse to give the evidence—

(a) under the law of the State of execution; or

(b) under the law of the State of origin, and the privilege or duty has been specified in the Letter, or, at the instance of the requested authority, has been otherwise confirmed to that authority by the requesting authority.

A Contracting State may declare that, in addition, it will respect privileges and duties existing under the law of States other than the State of origin and the State of execution, to the extent specified in that declaration.

Full Text of Convention on Taking Evidence Abroad in Civil or Commercial Matters

Article 12

The execution of Letter of Request may be refused only to the extent that—

(a) in the State of execution the execution of the Letter does not fall within the functions of the judiciary; or

(b) the State addressed considers that its sovereignty or security would be prejudiced thereby.

Execution may not be refused solely on the ground that under its internal law the State of execution claims exclusive jurisdiction over the subject-matter of the action or that its internal law would not admit a right of action on it.

Article 13

The documents establishing the execution of the Letter of Request shall be sent by the requested authority to the requesting authority by the same channel which was used by the letter.

In every instance where the Letter is not executed in whole or in part, the requesting authority shall be informed immediately through the same channel and advised of the reasons.

Article 14

The execution of the Letter of Request shall not give rise to any reimbursement of taxes or costs of any nature.

Nevertheless, the State of execution has the right to require the State of origin to reimburse the fees paid to experts and interpreters and the costs occasioned by the use of a special procedure requested by the State of origin under Article 9, paragraph 2.

The requested authority whose law obliges the parties themselves to secure evidence, and which is not able itself to execute

the Letter, may, after having obtained the consent of the requesting authority, appoint a suitable person to do so. When seeking this consent the requested authority shall indicate the approximate costs which would result from this procedure. If the requesting authority gives its consent it shall reimburse any costs incurred; without such consent the requesting authority shall not be liable for the costs.

CHAPTER II—TAKING OF EVIDENCE BY DIPLOMATIC OFFICERS, CONSULAR AGENTS AND COMMISSIONERS

Article 15

In a civil or commercial matter, a diplomatic officer or consular agent of a Contracting State may, in the territory of another Contracting State and within the area where he exercises his functions, take the evidence without compulsion of nationals of a State which he represents in aid of proceedings commenced in the courts of a State which he represents.

A Contracting State may declare that evidence may be taken by a diplomatic officer or consular agent only if permission to that effect is given upon application made by him or on his behalf to the appropriate authority designated by the declaring State.

Article 16

A diplomatic officer or consular agent of a Contracting State may, in the territory of another Contracting State and within the area where he exercises his functions, also take the evidence, without compulsion, of nationals of the State in which he exercises his functions or of a third State, in aid of proceedings commenced in the courts of a State which he represents, if—

Full Text of Convention on Taking Evidence Abroad in Civil or Commercial Matters

(a) a competent authority designated by the State in which he exercises his functions has given its permission either generally or in the particular case, and

(b) he complies with the conditions which the competent authority has specified in the permission.

A Contracting State may declare that evidence may be taken under this Article without its prior permission.

Article 17

In a civil or commercial matter, a person duly appointed as a commissioner for the purpose may, without compulsion, take evidence in the territory of a Contracting State in aid of proceedings commenced in the courts of another Contracting State if—

(a) a competent authority designated by the State where the evidence is to be taken has given its permission either generally or in the particular case; and

(b) he complies with the conditions which the competent authority has specified in the permission.

A Contracting State may declare that evidence may be taken under this Article without its prior permission.

Article 18

A Contracting State may declare that a diplomatic officer, consular agent or commissioner authorized to take evidence under Articles 15, 16 or 17, may apply to the competent authority designated by the declaring State for appropriate assistance to obtain the evidence by compulsion. The declaration may contain such conditions as the declaring State may see fit to impose.

If the authority grants the application it shall apply any measures of compulsion which are appropriate and are prescribed by its law for use in internal proceedings.

Article 19

The competent authority, in giving the permission referred to in Articles 15, 16 or 17, or in granting the application referred to in Article 18, may lay down such conditions as it deems fit, *inter alia*, as to the time and place of the taking of the evidence. Similarly it may require that it be given reasonable advance notice of the time, date and place of the taking of the evidence: in such a case a representative of the authority shall be entitled to be present at the taking of the evidence.

Article 20

In the taking of evidence under any Article of this Chapter persons concerned may be legally represented.

Article 21

Where a diplomatic officer, consular agent or commissioner is authorized under Articles 15, 16 or 17 to take evidence—

(a) he may take all kinds of evidence which are not incompatible with the law of the State where the evidence is taken or contrary to any permission granted pursuant to the above Articles, and shall have power within such limits to administer an oath or take an affirmation;

(b) a request to a person to appear or to give evidence shall unless the recipient is a national of the State where the action is pending, be drawn up in the language of the place where the

evidence is taken or be accompanied by a translation into such language

(c) the request shall inform the person that he may be legally represented and, in any State that has not filed a declaration under Article 18, shall also inform him that he is not compelled to appear or to give evidence;

(d) the evidence may be taken in the manner provided by the law applicable to the court in which the action is pending provided that such manner is not forbidden by the law of the State where the evidence is taken;

(e) a person requested to give evidence may invoke the privileges and duties to refuse to give the evidence contained in Article 11.

Article 22

The fact that an attempt to take evidence under the procedure laid down in this Chapter has failed, owing to the refusal of a person to give evidence, shall not prevent an application being subsequently made to take the evidence in accordance with Chapter I.

CHAPTER III—GENERAL CLAUSES

Article 23

A Contracting State may at the time of signature, ratification or accession, declare that it will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in Common Law countries.

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Article 24

A Contracting State may designate other authorities in addition to the Central Authority and shall determine the extent of their competence. However, Letters of Request may in all cases be sent to the Central Authority.

Federal States shall be free to designate more than one Central Authority.

Article 25

A Contracting State which has more than one legal system may designate the authorities of one of such systems, which shall have exclusive competence to execute Letters of Request pursuant to this Convention.

Article 26

A Contracting State, if required to do so because of constitutional limitations, may request the reimbursement by the State of origin of fees and costs, in connection with the execution of Letters of Request, for the service of process necessary to compel the appearance of a person to give evidence, the costs of attendance of such persons, and the cost of any transcript of the evidence.

Where a State has made a request pursuant to the above paragraph, any other Contracting State may request from that State the reimbursement of similar fees and costs.

Article 27

The provision of the present Convention shall not prevent a Contracting State from—

(a) declaring that Letters of Request may be transmitted to its judicial authorities through channels other than those provided for in Article 2;

(b) permitting, by internal law or practice, any act provided for in this Convention to be performed upon less restrictive conditions;

(c) permitting, by internal law or practice, methods of taking evidence other than those provided for in this Convention.

Article 28

The present Convention shall not prevent an agreement between any two or more Contracting States to derogate from—

(a) the provisions of Article 2 with respect to methods of transmitting Letters of Request;

(b) the provisions of Article 4 with respect to the languages which may be used;

(c) the provisions of Article 8 with respect to the presence of judicial personnel at the execution of Letters;

(d) the provisions of Article 11 with respect to the privileges and duties of witnesses to refuse to give evidence;

(e) the provisions of Article 13 with respect to the methods of returning executed Letters to the requesting authority;

(f) the provisions of Article 14 with respect to fees and costs;

(g) the provisions of Chapter II.

Article 29

Between Parties to the present Convention who are also Parties to one or both of the Conventions on Civil Procedure signed at the Hague on the 17th of July 1905[1] and the 1st of March 1954,[2] this Convention shall replace Article 8-16 of the earlier Conventions.

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Article 30

The present Convention shall not affect the application of Article 23 of the Convention of 1905, or of Article 24 of the Convention of 1954.

Article 31

Supplementary Agreements between Parties to the Conventions of 1905 and 1954 shall be considered as equally applicable to the present Convention unless the Parties have otherwise agreed.

Article 32

Without prejudice to the provisions of Articles 29 and 31, the present Convention shall not derogate from conventions containing provisions on the matters covered by this Convention to which the Contracting States are, or shall become Parties.

Article 33

A State may, at the time of signature, ratification or accession, exclude, in whole or in part, the application of the provisions of paragraph 2 of Article 4 and of Chapter II. No other reservation shall be permitted.

Each Contracting State may at any time withdraw a reservation it has made; the reservation shall cease to have effect on the sixtieth day after notification of the withdrawal.

When a State has made a reservation, any other State affected thereby may apply the same rule against the reserving State.

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Article 34

A State may at any time withdraw or modify a declaration.

Article 35

A Contracting State shall, at the time of the deposit of its instrument of ratification or accession, or at a later date, inform the Ministry of Foreign Affairs of the Netherlands of the designation of authorities, pursuant to Articles 2, 8, 24 and 25.

A Contracting State shall likewise inform the Ministry, where appropriate, of the following—

(a) the designation of the authorities to whom notice must be given, whose permission may be required, and whose assistance may be invoked in the taking of evidence by diplomatic officers and consular agents, pursuant to Articles 15, 16 and 18 respectively;

(b) the designation of the authorities whose permission may be required in the taking of evidence by commissioners pursuant to Article 17 and of those who may grant the assistance provided for in Article 18;

(c) declarations pursuant to Articles 4, 8, 11, 15, 16, 17, 18, 26 and 27;

(d) any withdrawal or modification of the above designations and declarations;

(e) the withdrawal of any reservation.

Article 36

Any difficulties which may arise between Contracting States in connection with the operation of this Convention shall be settled through diplomatic channels.

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Article 37

The present Convention shall be open for signature by the States represented at the Eleventh Session of the Hague Conference on Private International Law.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 38

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 37.

The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

Article 39

Any State not represented at the Eleventh Session of the Hague Conference on Private International Law which is a Member of this Conference or of the United Nations or of a specialized agency of that Organization, or a Party to the Statute of the International Court of Justice[1] may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 38.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for a State acceding to it on the sixtieth day after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of this accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the sixtieth day after the deposit of the declaration of acceptance.

Article 40

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for the territories mentioned in such an extension on the sixtieth day after the notification indicated in the preceding paragraph.

Article 41

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 38, even for States which have ratified it or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 42

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 37, and to the States which have acceded in accordance with Article 39, of the following—

(a) the signatures and ratifications referred to in Article 37;

(b) the date on which the present Convention enters into force in accordance with the first paragraph of Article 38;

(c) the accessions referred to in Article 39 and the dates on which they take effect;

(d) the extensions referred to in Article 40 and the dates on which they take effect;

(e) the designations, reservations and declarations referred to in Articles 33 and 35;

(f) the denunciations referred to in the third paragraph of Article 41;

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed the present Convention.

DONE at The Hague, on the 18th day of March 1970, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified

copy shall be sent, through the diplomatic channel, to each of the States represented at the Eleventh Session of the Hague Conference on Private International Law.
[Signatures omitted.]

Convention on the taking of evidence abroad in civil or commercial matters. Done at The Hague March 18, 1970; entered into force for the United States October 7, 1972.
TIAS 7444; 23 UST 2555
States which are parties:
Barbados
Czechoslovakia-1
Denmark-1a
Finland-2
France-2a
Federal Republic of Germany-2b
Israel-2c
Luxemburg-2d
Netherlands-2e
Norway-3
Portugal-3a
Singapore-3b
Sweden-3c
United Kingdom-3d
United States-4

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1. With the following declaration:
(Translation)

"The Socialist Republic of Czechoslovakia declares, with reference to Article 16 of the Convention on the taking of evidence abroad in civil or commercial matters, concluded at The Hague on 18 March 1970, that evidence may be taken in accordance with

Chapter II without its prior permission provided the principle of reciprocity is applied.

The Socialist Republic of Czechoslovakia also declares, in connection with Article 18 of the said Convention, that a diplomatic officer, consular agent or commissioner authorized to take evidence under Articles 15, 16 and 17, may request the competent Czechoslovak court or the Czechoslovak state notary to carry out procedural action and that such a diplomatic officer, consular agent or commissioner will transmit the dossier to that court or notary through the intermediary of the Minister of Justice of the Czech Socialist Republic in Prague or the Minister of Justice of the Slovak Socialist Republic in Bratislava, provided the principle of reciprocity is applied.

The Socialist Republic of Czechoslovakia wishes to state, in connection with Article 40 of the Convention according to all states the right to declare that the convention shall be applicable to all territories for the international relations of which it is responsible, that keeping certain countries in a state of dependence is in its opinion contrary to the spirit and objectives of the United Nations Declaration of 14 December 1960 on the granting of independence to colonial countries and peoples, which declares the necessity for a speedy and unconditional end to colonialism in all its forms".

By notification contained in Note dated May 28, 1978, the Minister of Justice of the Czech Socialist Republic and the Minister of Justice of Slovak Socialist Republic have been designated as central authorities in accordance with Articles 2 and 24 of the Convention.

1a. With the following reservations:

"1) Availing itself of the provisions laid down in Article 33, the Danish Government hereby declares, in accordance with Article

4, that Denmark will not accept Letters of Request which are sent in French.

2) Availing itself of the provisions laid down in Article 33, the Danish Government hereby declares, in accordance with Article 17, that Denmark will not accept the taking of evidence by commissioners."

And with the following declarations in accordance Article 35:

"Article 2

The Ministry of Justice is hereby designated as Central Authority.

Article 4

Letters of Request may be sent in Norwegian and Swedish, and Denmark accepts no obligation to return evidence taken in other languages than Danish.

Article 8

Members of the judicial personnel of the requesting authority of another contracting State may be present at the execution of a Letter of Request if they have obtained prior authorization from the competent Danish authority.

Article 15

A diplomatic officer or consular agent may take evidence if he has been authorized to do so by the Ministry of Justice.

Article 16

The Ministry of Justice will issue authorizations to take evidence.

Article 23

Letters of Requests issued for the purpose of obtaining pre-trial discovery of documents may not be executed in Denmark.

Article 27a

As has been the case hitherto, Letters of Request may be transmitted directly to the competent Danish court by the consular agents of foreign States."

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Additional declaration of July 23, 1980:

"The declaration made by the Kingdom of Denmark in accordance with article 23 concerning 'Letters of Request issued for the purpose of obtaining pre-trial discovery of documents' shall apply to any Letter of Request which requires a person:

a) to state what documents relevant to the proceedings to which the Letter of Request relates are, or have been, in his possession, other than particular documents specified in the Letter of Request: or

b) to produce any documents other than particular documents which are specified in the Letter of Request, and which are likely to be in his possession."

2. With the following reservation and declaration:

Reservation:

"In conformity with Article 33. Finland enters a reservation to paragraph 2 of Article 4 to the effect that Letters of Request in the English or French languages will not be accepted."

Declaration:

"1. In Finland the Ministry for Foreign Affairs shall be the Central Authority referred to in Article 2.

2. Swedish is the second official language of Finland. Finland will therefore in accordance with paragraph 1 of Article 4 accept Letters of Request in the Swedish language. The answer shall be given in the Swedish language if in connection with the Letter of Request this has been specifically requested.

3. A member of the judicial personnel of the requesting authority may in accordance with Article 8 be present at the execution of a Letter of Request, provided that the Finnish Ministry of Justice has given its consent.

4. The evidence referred to in Article 16 and 17 of the Convention may be taken without the prior permission of the Finnish authorities.

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5. Finland is not going to execute Letters of Request referred to in Article 23 issued for the purpose of obtaining pre-trial discovery of documents as known in Common Law countries."

Notification in conformity with Article 42, paragraph c, of the Convention

By note dated 11 December 1980 and received at the Ministry of Foreign Affairs of the Kingdom of the Netherlands on 12 December 1980 the Government of Finland informed the Ministry of the withdrawal in part of the reservation to Article 4, paragraph 2, of the above-mentioned Convention made at the time of ratification and declared that it hereafter accepts the Letters of Request done in or translated into the English language. In accordance with Article 35, sub. c, the Government of Finland made the following declaration:

> "By accepting Letters of Request in English, the Republic of Finland does not undertake to execute the request, or transmit the evidence thus obtained in the English language; nor to have translated the documents which establish the execution of the Letter of Request."

Furthermore, the Government of Finland modified the declaration concerning Article 23 of the above-mentioned Convention made at the time of ratification. The modified declaration is worded as follows:

"The declaration made by the Republic of Finland in accordance with Article 23 concerning "Letters of Request issued for the purpose of obtaining pre-trial discovery of documents" shall apply only to Letters of Request which require a person:

a) to state what documents relevant to the proceedings to which the Letter of Request relates are, or have been, in his possession, custody or power:

b) to produce any documents other than particular documents specified in the Letter of Request which are likely to be in his possession, custody or power."

2a-With the following declarations:

With respect to the first paragraph of Article 40 of the Convention. France declares that the Convention shall apply to all the Territory of the French Republic.

In conformity with the provisions of Article 33 , the French Government declares:

That, in application of the second paragraph of Article 4, it will execute only Letters in French or accompanied by a translation in French.

That, in application of Article 23, it will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in Common Law countries:

In conformity with the provisions of Article 2, the Ministry of Justice Civil Division of International Judicial Assistance, 13 Place Vendome, Paris (ler), is designated as the Central Authority to the exclusion of any other authority.

In conformity with the provisions of Article 16, the Ministry of Justice, Civil Division of International Judicial Assistance, 13 Place Vendome, Paris (ler), is designated as the competent authority to give permission to diplomatic officers or consular agents of a Contracting State to take the evidence, without compulsion, of persons other than nationals of that State in aid of proceedings commenced in the courts of a State which they represent.

That permission, which shall be given for each specific case and shall be accompanied by special conditions when appropriate, shall be granted under the following general conditions:

1. Evidence shall be taken only within the confines of the Embassies or Consulates:

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2. The date and time of taking the evidence shall be notified in due time to the Civil Division of International Judicial Assistance so that it may have the opportunity to be represented at the proceedings:

3. Evidence shall be taken in premises accessible to the public:

4. Persons requested to give evidence shall be served with an official instrument in French or accompanied by a translation into French, and that instrument shall mention:

a. That evidence is being taken in conformity with the provisions of The Hague Convention of March 15, 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters and relates to legal proceedings pending before a jurisdiction specifically designated by a Contracting State.

b. That appearance is voluntary and failure to appear will not give rise to criminal proceedings in the State of origin;

c. That the parties to the trial are consenting or, if not, the grounds of their objections;

d. That in the taking of evidence the person concerned may be legally represented;

e. That a person requested to give evidence may invoke a privilege or duty to refuse to give evidence.

A copy of these requests shall be transmitted to the Ministry of Justice.

5. The Civil Division of International Judicial Assistance shall be kept informed of any difficulty.

In conformity with the provisions of Article 17, the Ministry of Justice, Civil Division of International Judicial Assistance, 13 Place, Vendome, Paris (ler), is appointed as the competent authority to give permission to persons duly appointed as commissioners to proceed, without compulsion, to take any evidence in aid of proceedings commenced in the courts of a Contracting State.

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This permission, which shall be given for each specific case and shall be accompanied by special conditions when appropriate, shall be granted under the following general conditions:

1. Evidence shall be taken only within the Embassy confines;

2. The date and time of taking the evidence shall be notified in due time to the Civil Division of International Judicial Assistance so that it may have the opportunity to be represented at the proceedings;

3. Evidence shall be taken in premises accessible to the public;

4. Persons requested to give evidence shall be served with an official instrument in French or accompanied by a translation in French, and that instrument shall mention:

a. That evidence is being taken in conformity with the provisions of The Hague Convention of March 18, 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters and relates to legal proceedings pending before a jurisdiction specifically designated by a Contracting State;

b. That appearance is voluntary and failure to appear will not give rise to criminal proceedings in the State of origin;

c. That the parties to the trial are consenting and, if not, the grounds of their objections;

d. That in the taking of evidence the person concerned may be legally represented;

e. That a person requested to give evidence may invoke the privilege and duty to refuse to give evidence.

A copy of these requests shall be transmitted to the Ministry of Justice.

5. The Civil Division of International Judicial Assistance shall be kept informed of any difficulty.

The request for permission transmitted by the requesting authority to the Ministry of Justice shall specify:

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1. The motives that led to choosing this method of taking evidence in preference to that of a Letter of Request, considering the judiciary costs incurred;

2. The criteria for appointing commissioners when the person appointed does not reside in France.

The French Government declares that, in application of the provisions of Article 8, members of the judicial personnel of the requesting authority of a Contracting State may be present at the execution of a Letter of Request.

2b-"A. The Government of the Federal Republic of Germany makes the following declarations in accordance with paragraph 1 of Article 33 of the Convention of 18th March 1970:

The Federal Republic of Germany makes the reservation provided for in the first sentence of paragraph 1 of Article 33 of the Convention excluding the application of the provisions of paragraph 2 of Article 4 of the Convention. Letters of Request to be executed under Chapter 1 of the Convention must, in accordance with paragraphs 1 and 5 of Article 4 of the Convention, be in the German language or be accompanied by a translation into that language.

The Federal Republic of Germany declares in accordance with the option provided for in the first sentence of paragraph 1 of Article 33 of the Convention to make a reservation excluding the application of the provisions of Chapter 11 of the Convention that the taking of evidence by diplomatic officers or consular agents is not permissible in its territory if German nationals are involved.

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B. The Government of the Federal Republic of Germany makes the following declarations pursuant to Article 35 of the Convention of 18th March 1970:

(1) The authority competent to execute a Letter of Request shall be the local court (Amtsgericht) in whose district the official act is to be performed.

Letter of Request in the same matter addressed to the Central Authority of the Land in which the respective request is to be executed. The Central Authority pursuant to Article 2 and paragraph 2 of Article 24 of the Convention shall be for

Baden-Wurttemberg — das Justizministerium Baden-Wurttemberg (The Ministry of Justice of Baden-Wurttemberg), D 7000 Stuttgart

Bavaria — das Bayerische Staatsministerium der Justiz (The Bavarian State Ministry of Justice), D 8000 Munchen der Senator fur Justiz (The Senator of Justice), D 1000 Berlin

Bremen — der Prasident des Landgerichts Bremen (The President of the Regional Court of Bremen), D 2800 Bremen

Hamburg — der Prasident des Amtsgerichts Hamburg (The President of the Local Court of Hamburg), D 2000 Hamburg

Hesse — der Hessische Minister der Justiz (The Hessian Minister of Justice), D 6200 Wiesbaden

Lower Saxony — der Niedersachsische Minister der Justiz (The Minister of Justice of Lower Saxony), D 3000 Hannover

Northrhine-Westphalia — der Justizminister des Landes Nordrhein-Westfalen (The Minister of Justice of the Land Northrhine-Westphalia), D 4000 Dusseldorf

Rhineland-Palatinate — das Ministerium der Justiz (The Ministry of Justice), D 6500 Mainz

Saarland — der Minister fur Rechtspilege (The Minister of Justice), D 6600 Saarbrucken

Schleswig-Holstein — der Justizminister des Landes Schleswig-Holstein (The Minister of Justice of the Land Schleswig-Holstein), D 2300 Kiel

(2) Pursuant to Article 8 of the Convention, the Government of the Federal Republic of Germany declares that members of the requesting court of another Contracting State may be present at the execution of a Letter of Request by the local court if prior authorization has been given by the Central Authority of the Land where the request is to be executed.

(3) The taking of evidence by diplomatic officers or consular agents pursuant to paragraph 1 of Article 16 of the Convention which involves nationals of a third State or stateless persons shall be subject to permission from the Central Authority of the Land where the evidence is to be taken. Pursuant to paragraph 2 of Article 16 of the Convention, permission shall not be required if the national of the third State is also a national of the State of the requesting court.

(4) A commissioner of the requesting court may not take evidence pursuant to Article 17 of the Convention unless the Central Authority of

the Land where the evidence is to be taken has given its permission. Such permission may be made subject to conditions. The local court in whose district official acts would have to be performed by virtue of a Letters of Request shall be ad-ter [sic] shall be entitled to control the preparation and the actual taking of the evidence. Under the second sentence of Article 19 of the Convention, a member of the court may be present at the taking of the evidence.

(5) The Federal Republic of Germany declares in pursuance of Article 23 of the Convention that it will not in its territory, execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in Common Law countries."

2c-*Notification in conformity with Article 42, paragraph c, of the Convention*

In accordance with Article 35 of the Convention Israel notified by a Note dated April 17, 1980 and received at the Ministry of Foreign Affairs of the Kingdom of the Netherlands on April 25, 1980, that the Central Authority designated by the State of Israel in accordance with Article 2 of the above-mentioned Convention, is the Director of Courts, 19 Jaffa Road, Jerusalem.

2d-*Notification in accordance with Article 42, sub a and e, of the Convention*

In accordance with Article 37, paragraph 2, Luxemburg deposited on 26 July 1977 its instrument of ratification of the Convention with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

In conformity with Article 38, paragraph 2, the Convention shall enter into force for Luxemburg on 24 September 1977.

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On the occasion of the deposit of the said instrument of ratification the Government of Luxemburg made the following declarations and reservations (translation):

"—In accordance with Article 2 the Parquet General is designated as the Central Authority.

—In pursuance of Article 4, paragraph 4, Letters of Request in German shall also be accepted.

—In pursuance of Article 23, Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in Common Law countries shall not be executed.

—In accordance with the provisions of Article 16, the Parquet General is designated as the authority competent to authorize the diplomatic officers or consular agents of a Contracting State to take, without compulsion, the evidence of persons other than the nationals of that State in aid of proceedings commenced in the courts of the State which they represent.

This authorization, which is given in each specific case and to which specific conditions, where appropriate, are attached, is granted under the following general conditions:

1—The evidence shall be taken only within the precincts of an Embassy or Consultate.

2—The Parquet General shall be given reasonable advance notice of the time, date and place of the taking of evidence so that it can, if it wishes, be represented.

3—A request to a person to appear shall, in accordance with the regulations, be in the form

of an official document in French or German or accompanied by an (sic) translation into one of these languages stating:

a) that the evidence is to be taken in accordance with the provisions of the Convention on the taking of evidence abroad in civil or commercial matters concluded at The Hague on 18 March 1970, and in the framework of a judicial procedure followed in a jurisdiction designated by a Contracting State;

b) that the appearance is voluntary and that no prosecution in the requesting State will result from failure to appear;

c) that the parties to the action, where appropriate, consent to the taking of the evidence or are opposed to it for reasons to be given;

d) that the person requested to appear may be legally represented;

e) that the person requested to appear may invoke a privilege or a duty to refuse to give evidence.

—In accordance with the provisions of Article 17, the Parquet General is designated as the authority competent to authorize persons designated in accordance with the regulations as commissioners to take evidence, without compulsion, in aid of proceedings commenced in the courts of another Contracting State.

This authorization, which is given in the particular case and to which specific conditions, where appropriate, are attached, is granted under the following general conditions:

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1—The Parquet General shall be given reasonable advance notice of the time, date and place of the taking of evidence so that it can, if it wishes, be represented.

2—A request to a person to appear shall, in accordance with the regulations, be in the form of an official document in French or German or accompanied by a translation into one of these languages stating:

a) that the evidence is to be taken in accordance with the provisions of the Convention on the taking of evidence abroad in civil or commercial matters concluded at The Hague on 18 March 1970, and in the framework of a judicial procedure followed in a jurisdiction designated by a Contracting State;

b) that the appearance is voluntary and that no prosecution in the requesting State will result from failure to appear;

c) that the parties to the action, where appropriate, consent to the taking of the evidence or are opposed to it for reasons to be given;

d) that the person requested to appear may be legally represented;

e) that the person requested to appear may invoke a privilege or a duty to refuse to give evidence.

—In pursuance of Article 8, members of the judicial personnel of the requesting authority of a Contracting State may be present at the execution of a Letter of Request."

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2e-*Notification in conformity with Article 42, sub a and e, of the Convention.*

"The Kingdom of the Netherlands deposited on 8 April 1981, in accordance with Article 37, paragraph 2, of the Convention its instrument of ratification for the Kingdom in Europe of the above-mentioned Convention.

Upon the deposit of the instrument of ratification the Government of the Kingdom of the Netherlands has made the following declarations:

Translation

In the Netherlands the Convention shall be applied as follows:

Article 2

The Public Prosecutor at The Hague district Court is designated as the Central Authority.

Article 4

Letters of Request will be accepted in Dutch, German, English or French, or if they are accompanied by a translation into one of these languages.

The Netherlands does not undertake to translate documents for the execution of a Letter of Request.

Article 8

Members of the judicial personnel of another Contracting State may be present at the execution

of a Letter of Request provided that the court which is responsible for execution authorizes this and provided that any conditions which the court may impose are respected.

Article 11

Only the court which is responsible for executing the Letter of Request shall be competent to decide whether any person concerned by the execution has a privilege or duty to refuse to give evidence under the law of a State other than the State of origin; no such privilege or duty exists under Dutch law.

Article 14

Fees paid to experts and interpreters and costs occasioned by the use of a special procedure requested by the State of origin under Article 9, paragraph 2 of the Convention shall be borne by the State of origin.

Article 16

In the Netherlands, no prior permission is required for the taking of evidence as provided for in Article 16.

Article 17

The permission referred to in Article 17 must be requested from the President of the District Court

in the area in which evidence is to be taken. If evidence is to be taken from witnesses or experts, the area in question will be that in which the witnesses or experts, or the majority of them, reside. If the President gives permission, he may impose any conditions which he considers necessary to ensure that the evidence is taken in a proper manner. He may decide that the evidence should be taken at the court, under the supervision of a judge designated by him. Permission will only be granted if the following conditions are met:

a) the witness or expert concerned must have been duly summoned; the summons must be in Dutch or must be accompanied by a Dutch translation and must contain:

—the facts of the case and a summary of the proceedings in connection with which the evidence is to be taken, and details of the court which has requested the evidence;

—a statement to the effect that there is no obligation for the witness or expert to appear, and that if he refuses to appear, to take an oath, to give his word of honour or to give evidence, he will not incur any penalty or measure of any kind, either in the Netherlands on in the State where the proceedings have been instituted;

—a statement to the effect that the person concerned may be legally represented;

—a statement to the effect that in so far as the person concerned has a privilege or duty to refuse to give evidence, he may do so;

—a statement to the effect that the commissioner will reimburse expenses incurred by

the witness or expert in connection with his appearance to give evidence.

b) A copy of the summons must be forwarded to the President.

c) The request for permission must state the reasons why the taking of evidence has been entrusted to a commissioner and it must state the commissioner's official status unless he is a lawyer competent to practise in the Netherlands.

d) The costs of taking the evidence, i.e. the expenses of the witnesses, experts or interpreters, must be reimbursed in full.

Article 23

The Netherlands will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in Common Law countries.

For the purposes of Article 23 of the Convention. "Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in Common Law countries", which the Netherlands will not execute, are defined by the Government of the Kingdom of the Netherlands as being any Letters of Request which require a person:

a. to state which of the documents which are of relevance to the proceedings to which the Letter of Request relates have been in his possession, custody or power; or

b. to produce any document other than particular documents specified in the Letter of

Request as being documents which the court which is conducting the proceedings believes to be in his possession, custody or power.

Article 26

The Netherlands will request that any State of origin which has made a request pursuant to paragraph 1 of Article 26 should reimburse the fees and costs to which this paragraph refers.

In accordance with Article 38, paragraph 2, the Convention will enter into force for the Kingdom of the Netherlands (the Kingdom in Europe) on 7 June 1981."

3-With the following reservation:

"In conformity with article 33, Norway enters a reservation to paragraph 2 of article 4 to the effect that Letters of Request in the French language will not be accepted."

And with the following declarations:

"I. The Royal Ministry of Justice and Police is designated as the Central Authority with reference to article 2 and as the Competent Authority with reference to articles 15, 16 and 17.

II. With reference to article 4, paragraph 3, the Kingdom of Norway declares that letters in the Danish or Swedish languages can be sent to the Central Authority.

III. By accepting Letters of Request in another language than the Norwegian, the Kingdom of Norway does not undertake to execute the request, or transmit the evidence thus obtained

in this other language; nor to have translated the documents which establish the execution of the letter of request.

IV. By virtue of article 15, evidence can be taken by diplomatic officers or consular agents only if, upon application, prior permission to that effect has been granted.

V. By virtue of article 23, the Kingdom of Norway declares that it will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in Common Law countries."

The declaration made by the Kingdom of Norway in accordance with article 23 concerning "Letters of Request issued for the purpose of obtaining pre-trial discovery of documents" shall apply only to Letters of Request which require a person

a) to state what documents relevant to the proceedings to which the Letter of Request relates, are, or have been, in his possession, other than particular documents specified in the Letter of Request; or

b) to produce any documents other than particular documents which are specified in the Letter of Request, and which are likely to be in his possession.

3a-With the following reservations and declarations:

(Translation)

"a) In accordance with Article 33 of the Convention, the Portuguese State makes the following reservations:

1. exclusion of the application of paragraph 2 of Article 4;

2. exclusion of the application of Chapter II, with the exception of Article 15.

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b) In accordance with Articles 15 and 23 of the Convention, the Portuguese State makes the following declarations:

1. The Portuguese State declares that the evidence as referred to in Article 15, can only be taken if permission to that effect is given by the appropriate authority designated by it upon application made by the diplomatic or consular agent;

2. The Portuguese State declares that it will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in Common Law Countries.

c) With regard to Articles 2 and 15 of the Convention, the competent Portuguese authority will be the Director-General of the Judiciary Department (''Direcgao-Geral dos Servicos Judiciaros'') of the Ministry of Justice.''

3b-In accordance with Article 39, paragraph 3, the Convention shall enter into force for the Republic of Singapore on December 26, 1978.

Notification in accordance with Convention Article 42(c) and (e):

On October 27, 1978, the Ministry of Foreign Affairs of the Kingdom of the Netherlands received the instrument of accession of the Republic of Singapore to the Convention on the Taking of Evidence Abroad in Civil and Commercial Matters in accordance with Article 39, Paragraph 2, of the aforesaid Convention.

At the time of its accession the Government of the Republic of Singapore made the following reservations:

''(i) The entire Chapter II of the Convention is not applicable to the Republic of Singapore; and

(ii) With regard to Article 4, paragraph 2, the Republic of Singapore will not accept a Letter of Request in a language other than English, since this language is the one used by the judicial personnel in Singapore."

In accordance with Article 23 the Government of the Republic of Singapore has declared that the Republic of Singapore will not execute Letters of Request issued for the purpose of obtaining pretrial discovery of documents as known in Common Law countries.

The Government of the Republic of Singapore has further declared that it understands "Letters of Request issued for the purpose of obtaining pretrial discovery of documents" for the purposes of the foregoing declaration as including any Letter of Request which requires a person:

(a) to state what documents relevant to the proceedings to which the Letter of Request relates are, or have been, in his possession, custody or power; or

(b) to produce any documents other than particular documents specified in the Letter of Request as being documents appearing to the requested court to be, or likely to be, in his possession, custody or power. It is also understood that the to civil or commercial actions in the Convention does not include tax matters for the Republic of Singapore.

In accordance with Article 39, paragraph 3, the Convention shall enter into force for the Republic of Singapore on December 26, 1978.

The accession shall be effective only for relations between the Republic of Singapore and contracting States that declare that they accept this accession.

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Notification in conformity with Article 42, paragraph e, of the Convention:

In accordance with Article 35 of the Convention Singapore notified the Ministry of Foreign Affairs of the Kingdom of the Netherlands by a Note dated August 4, 1979, that the Central Authority which will undertake to receive Letters of Request referred to in Article 2 of the convention, is the Registrar of the Supreme Court.

3c-With the following declarations:

(Translation)

—That, in pursuance of Article 4, para. 4, Letters of Request in the Danish and Norwegian languages will be accepted;

—That, in pursuance of Article 8, members of the judicial personnel of the requesting authority of another Contracting State may be present at the execution of a Letter of Request without prior authorization;

—That, in pursuance of Article 15, para. 2, a diplomatic officer or consular agent may only take evidence if permission to do so has been granted by the competent Swedish authority;

—That, in pursuance of Article 23, Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in Common Law countries will not be executed;

—That documents provided by Sweden which establish that a Letter of Request has been executed will be in the Swedish language only.

Ministry of Foreign Affairs, Stockholm, has been designated as the Central Authority referred to in Article 2 and also as the Competent Authority referred in Article 15-17.

Additional declaration of July 11, 1980:

> "The Swedish Government understands 'Letters of Request issued for the purpose of pre-trial discovery of documents' for the purposes of the foregoing Declaration as including any Letter of Request which requires a person:

> a) to state what documents relevant to the proceedings to which the Letter of Request relates are, or have been, in his possession, custody or power; or
>
> b) to produce any documents other than particular documents specified in the Letter of Request, which are likely to be in his possession, custody or power."

3d-Notification in conformity with Article 42, under a and e of the Convention:

In accordance with Article 37, paragraph 2, the United Kingdom of Great Britain and Northern Ireland deposited on July 16, 1976 its instrument of ratification with the Ministry of Foreign Affairs of the Netherlands.

In conformity with Article 38, paragraph 2, the Convention shall enter into force for the United Kingdom on September 14, 1976.

The instrument of ratification mentioned above, contains the following reservation: ". . . . in accordance with the provisions of Article 33 the United Kingdom will not accept a Letter of Request in French."

On the occasion of the deposit of the said instrument of ratification the Government of the United Kingdom of Great Britain and Northern Ireland made the following declarations:

> 1. In accordance with Article 8 Her Majesty's Government declare that members of the judicial personnel of the requesting authority may be present at the execution of a Letter of Request.
>
> 2. In accordance with Article 18 Her Majesty's Government declare that a diplomatic officer, consular agent or commissioner authorized to take evidence under Articles 15, 16 and 17 of the Convention may apply to the competent

authority in Gibraltar designated hereinbefore for appropriate assistance to obtain such evidence by compulsion provided that the Contracting State whose diplomatic officer, consular agent or commissioner makes the application has made a declaration affording reciprocal facilities under Article 18.

3. In accordance with Article 23, Her Majesty's Government declare that the United Kingdom will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents. Her Majesty's Government further declare that Her Majesty's Government understand "Letters of Request issued for the purpose of obtaining pre-trial discovery of documents" for the purposes of the foregoing Declaration as including any Letter of Request which requires a person—

a. to state what documents relevant to the proceedings to which the Letter of Request relates are, or have been, in his possession, custody, or power; or

b. to produce any documents other than particular documents specified in the Letter of Request as being documents appearing to the requested court to be, or to be likely to be, in his possession, custody or power.

4. In accordance with Article 27 Her Majesty's Government declare that by the law and practice of the United Kingdom the prior permission referred to in Articles 16 and 17 is not required in respect of diplomatic officers, consular

> agents or commissioners of a Contracting State which does not require permission to be obtained for the purposes of taking evidence under Articles 16 and 17."

In accordance with Article 35 of the Convention, the Government of the United Kingdom made the following designations:

1. Under Article 2: the Foreign and Commonwealth Office.
2. Under Article 16: the Foreign and Commonwealth Office.
3. Under Article 17: the Foreign and Commonwealth Office.
4. Under Article 18: the Senior Master of the Supreme Court (Queen's Bench Division) for England and Wales; the Crown Agent for Scotland, for Scotland; the Registrar of the Supreme Court of Northern Ireland, for Northern Ireland.
5. Under Article 24: the Senior Master of the Supreme Court (Queen's Bench Division) in England and Wales; the Crown Agent for Scotland, for Scotland: the Registrar of the Supreme Court of Northern Ireland in Northern Ireland.

By notification received on June 23, 1978 by the Ministry of Foreign Affairs of the Netherlands, the Convention was extended to Hong Kong effective Aug. 22, 1978, with the following declaration:

> "(a) In accordance with the provisions of article 4 and article 38 of the Convention. Hong Kong will not accept a Letter of Request in French.
>
> (b) In accordance with article 35 and article 24 of the Convention, the Registrar of the Supreme Court of Hong Kong is designated as an additional authority competent to receive Letters of Request for execution in Hong Kong.
>
> (c) In accordance with article 35 and articles 16 and 17 of the Convention, the Chief Secretary is designated as the competent authority of Hong Kong."

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Extension to Gibraltar—

In accordance with Article 40, Paragraph 3, the Convention shall enter into force for Gibraltar on January 20, 1979.

The extension declaration contains the following reservation: "In accordance with the provisions of Article 4 and Article 33 of the Convention. Gibraltar will not accept a Letter of Request in French."

In accordance with Article 35 of the Convention the following designations have been made:

> "(a) Under Articles 16 and 17 of the Convention, the Deputy Governor is designated as the competent authority for Gibraltar;
>
> "(b) Under Article 18 of the Convention, the Registrar of the Supreme Court of Gibraltar is designated as the competent authority;
>
> "(c) Under Article 24 of the Convention, the Deputy Governor is designated as an additional authority competent to receive Letters of Request for execution in Gibraltar."

[For declarations see the original note.]

Notification in conformity with article 42, sub d and e, of the Convention

By a letter dated November 20, 1978, and received at the Ministry of Foreign Affairs of the Kingdom of the Netherlands on November 21, 1978, the Ambassador of the United Kingdom of Great Britain and Northern Ireland at The Hague, referring to the deposit on July 16, 1976 of the instrument of ratification of the above-mentioned Convention by the United Kingdom of Great Britain and Northern Ireland, declared in accordance with article 40 that the Convention shall extend to Gibraltar. The Convention shall enter into force for Gibraltar on January 20, 1979.

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The declaration of extension contains the following reservation:

> ". . . in accordance with the provisions of Article 4 and Article 33 of the Convention, Gibraltar will not accept a Letter of Request in French."

In accordance with Article 35 of the Convention the following designations have been made:

a) under Articles 16 and 17 of the Convention the Deputy Governor is designated as the competent authority for Gibraltar;

b) under Article 18 of the Convention, the Registrar of the Supreme Court of Gibraltar is designated as the competent authority;

c) under Article 24 of the Convention, the Deputy Governor is designated as an additional authority competent to receive Letters of Request for execution in Gibraltar, and the following declarations:

1. In accordance with Article 8, members of the judicial personnel of the requesting authority may be present at the execution of a Letter of Request in Gibraltar.

2. In accordance with Article 18, a diplomatic officer, consular agent or commissioner authorized to take evidence under Articles 15, 16 and 17 of the Convention may apply to the competent authority in Gibraltar designated hereinbefore for appropriate assistance to obtain such evidence by compulsion provided that the Contracting State whose diplomatic officer, consular agent or commissioner makes the application has made a declaration affording reciprocal facilities under Article 18.

3. In accordance with Article 23, Gibraltar will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents. The Government of Gibraltar understands "Letters of Request issued for the purpose of obtaining pre-trial discovery of documents" for the purposes of the foregoing

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Declaration as including any Letter of Request which requires a person:

a) to state what documents relevant to the proceedings to which the Letter of Request relates are, or have been, in his possession, custody or power; or

b) to produce any documents either than particular documents specified in the Letter of Request as being documents appearing to the request court to be, or likely to be, in his possession, custody or power.

4. In accordance with Article 27, by the law and practice of Gibraltar the prior permission referred to in Articles 16 and 17 of the Convention is not requried in respect of diplomatic officers, consular agents or commissioners of a Contracting State which does not require permission to be obtained for the purposes of taking evidence under Article 16 or 17.

Extension to Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus—

"The Convention shall enter into force for the Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus on August 24, 1979.

The declaration of extension contains the following reservation:

". . . in accordance with the provisions of Article 4 and Article 33 of the Convention, the Sovereign Base Areas will not accept a Letter of Request in French."

In accordance with Article 35 of the Convention the following designations have been made:

a) under Articles 16 and 17 of the Convention the Chief Officer, Sovereign Base Areas, is

designated as the competent authority for the Sovereign Base Areas;

b) under Article 18 of the Convention, the Senior Registrar of the Judge's Court of the Sovereign Base Areas of Akrotiri and Dhekelia is designated as the competent authority;

c) under Article 24 of the Convention, the Senior Registrar of the Judge's Court of the Sovereign Base Areas of Akrotiri and Dhekelia is designated as an additional authority competent to receive Letters of Request for execution in the Sovereign Base Areas.

and the following declarations:

1. In accordance with Article 8, members of the judicial personnel of the requesting authority may be present at the execution of a Letter of Request in the Sovereign Base Areas.

2. In accordance with Article 18, a diplomatic officer, consular agent or commissioner authorized to take evidence under Article 15, 16 and 17 of the Convention may apply to the competent authority in the Sovereign Base Areas designated hereinbefore for appropriate assistance to obtain such evidence by compulsion provided that the Contracting State whose diplomatic officer, consular agent or commissioner makes the application has made a declaration affording reciprocal facilities under Article 18.

3. In accordance with Article 23, the Sovereign Base Areas will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents. The Administration

of the Sovereign Base Areas understands "Letters of Request issued for the purpose of obtaining pre-trial discovery of documents" for the purposes of the foregoing Declaration as including any Letter of Request which requires a person:

a) to state what documents relevant to the proceedings to which the Letter of Request relates are, or have been, in his possession, custody or power; or

b) to produce any documents other than particular documents specified in the Letter of Request as being documents appearing to the requested court to be, or likely to be, in his possession, custody or power.

4. In accordance with Article 27, by the law and practice of the Sovereign Base Areas the prior permission referred to in Articles 16 and 17 of the Convention is not required in respect of diplomatic officers, consular agents or commissioners of a Contracting State which does not require permission to be obtained for the purposes of taking evidence under Articles 16 or 17."

Extension to Falkland Islands and Dependencies—Notification in conformity with Article 42, sub d and e, of the Convention

By a letter dated November 23, 1979, and received at the Ministry of Foreign Affairs of the Kingdom of the Netherlands on November 26, 1979, the Ambassador of the United Kingdom of Great Britain and Northern Ireland at The Hague referring to the deposit on July 16, 1976 of the instrument of ratification of the above-mentioned Convention by the United Kingdom of Great Britain and Northern Ireland, declared in accordance with

Article 40 that the Convention shall extend to the Falkland Islands and Dependencies.

The Convention shall enter into force for the Falkland Islands and Dependencies on January 25, 1980.

The declaration of extension contains the following reservations:

". . . in accordance with the provisions of Article 4 and Article 33 of the Convention, the Falkland Islands and Dependencies will not accept a Letter of Request in French." In accordance with Article 35 of the Convention the following designations have been made:

a) under Articles 16, 17 and 18 of the Convention the Judge of the Supreme Court of the Falkland Islands, is designated as the competent authority for the Falkland Islands and Dependencies;

b) under Article 24 of the Convention, the Governor of the Falkland Islands and its dependencies is designated as an additional authority competent to receive Letters of Request for execution in the Falkland Islands and Dependencies.

and the following declarations:

1. In accordance with Article 8, members of the judicial personnel of the requesting authority may be present at the execution of a Letter of Request in the Falkland Islands and Dependencies.

2. In accordance with Article 18, a diplomatic officer, consular agent or commissioner authorized to take evidence under Article 15, 16 and 17 of the Convention may apply to the competent authority in the Falkland Islands and Dependencies designated hereinbefore for appropriate assistance to obtain such evidence by compulsion provided that the Contracting State whose diplomatic officer, consular agent or commissioner makes the application has made a declaration affording reciprocal facilities under Article 18.

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3. In accordance with Article 23, the Falkland Islands and Dependencies will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents.

The Governor of the Falkland Islands and its dependencies understands "Letters of Request issued for the purpose of obtaining pre-trial discovery of documents" for the purposes of the foregoing declaration as including any Letter of Request which requires a person:

a) to state what documents relevant to the proceedings to which the Letter of Request relates are, or have been, in his possession, custody or power; or

b) to produce any documents other than particular documents specified in the Letter of Request as being documents appearing to the requested court to be, or likely to be, in his possession, custody or power.

4. In accordance with Article 27, by the law and practice of the Falkland Islands and Dependencies the prior permission referred to in Articles 16 and 17 of the Convention is not required in respect of diplomatic officers, consular agents or commissioners of a Contracting State which does not require permission to be obtained for the purposes of taking evidence under Articles 16 or 17.

Extension to Isle of Man.—

Notification is conformity with Article 42, sub d and e, of the Convention.

By a letter dated April 16, 1980, and received at the Ministry of Foreign Affairs of the Kingdom of the Netherlands on April 16, 1980, the Ambassador of the United Kingdom of Great Britain and Northern Ireland at The Hague, referring to the deposit on July 16, 1976 of the instrument of ratification of the above-mentioned Convention by the United Kingdom of Great Britain and Northern Ireland, declared in accordance with article 40 that the Convention shall extend to the Isle of Man.

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The Convention shall enter into force for the Isle of Man on June 15, 1980.

The declaration of extension contains the following reservation:

> ". . . in accordance with the provisions of Article 4 and Article 33 of the Convention the Isle of Man will not accept a Letter of Request in French."

In accordance with Article 35 of the Convention the following designations have been made:

a) under Articles 16, 17 and 18 of the Convention Her Majesty's First Deemster and Clerk of the Rolls is designated as the competent authority for the Isle of Man;

b) under Article 24 of the Convention, Her Majesty's First Deemster and Clerk of the Rolls is designated as an additional authority competent to receive Letters of Request for execution in the Isle of Man.

and the following declarations:

1. In accordance with Article 8, members of the judicial personnel of the requesting authority may be present at the execution of a Letter of Request in the Isle of Man.

2. In accordance with Article 18, a diplomatic officer, consular agent or commissioner authorized to take evidence under Article 15, 16 and 17 of the Convention may apply to the competent authority in the Isle of Man designated hereinbefore for appropriate assistance to obtain such evidence by compulsion provided that the Contracting State whose diplomatic officer, consular agent or commissioner makes the application has made a declaration affording reciprocal facilities under Article 18.

3. In accordance with Article 22, the Isle of Man will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents.

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The Government of the Isle of Man understands "Letter of Request issued for the purpose of obtaining pre-trial discovery of documents" for the purposes of the foregoing declaration as including any Letter of Request which requires a person:

a) to state what documents relevant to the proceedings to which the Letter of Request relates are, or have been, in his possession, custody or power; or

b) to produce any documents other than particular documents specified in the Letter of Request as being documents appearing to the requested court to be, or likely to be, in his possession, custody or power.

4. In accordance with Article 27, by the law and practice of the Isle of Man the prior permission referred to in Articles 16 and 17 of the Convention is not required in respect of diplomatic officers, consular agents or commissioners of a Contracting State which does not require permission to be obtained for the purposes of taking evidence under Articles 16 or 17.

Extension to Cayman Islands—

Notification in conformity with Article 42, sub d and e, of the Convention

By letter dated 16 September 1980 and received at the Ministry of Foreign Affairs of the Kingdom of the Netherlands on that same date, the Ambassador of the United Kingdom of Great Britan and Northern Ireland at The Hague referring to the deposit on 16 July 1976 of the instrument of ratification of the above-mentioned Convention by the United Kingdom of Great Britain and Northern Ireland declared in accordance with Article 40 that the Convention shall extend to the Cayman Islands.

The Convention will enter into force for the Cayman Islands on 15 November 1980.

The declaration of extension contains the following reservation:

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". . .in accordance with the provisions of Article 4 and Article 33 of the Convention. . . .the Cayman Islands will not accept a Letter of Request in French."

In accordance with Article 35 of the Convention the following designations have been made:

a) Under Articles 16 and 17 of the Convention, the Attorney General is designated as the competent authority for the Cayman Islands;

b) Under Article 18 of the Convention, the Clerk of the Grand Court is designated as the competent authority;

c) Under Article 24 of the Convention, His Excellency the Governor is designated as an additional authority competent to receive Letters of Request for execution in the Cayman Islands. and the following declarations:

1. In accordance with Article 8, members of the judicial personnel of the requesting authority may be present at the execution of a Letter of Request in the Cayman Islands.

2. In accordance with Article 18, a diplomatic officer, consular agent or commissioner authorized to take evidence under Article 15, 16 and 17 of the Convention may apply to the competent authority in the Cayman Islands designated hereinbefore for appropriate assistance to obtain such evidence by compulsion provided that the Contracting State whose diplomatic officer, consular agent or commissioner makes the application, has made a declaration affording reciprocal facilities under Article 18.

3. In accordance with Article 23, the Cayman Islands will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents. The Government of the Cayman Islands understand "Letters of Request issued for the purpose of obtaining pre-trial discovery of documents" for the purposes of the foregoing declaration as including any Letter of Request which requires a person:

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a) to state what documents relevant to the proceedings to which the Letter of Request relates are, or have been, in his possession, custody or power; or

b) to produce any documents other than particular documents specified in the Letter of Request as being documents appearing to the requested court to be, or likely to be, in his possession, custody or power.

4. In accordance with Article 27, by the law and practice of the Cayman Islands the prior permission referred to in Article 16 and 17 of the Convention is not required in respect of diplomatic officers, consular agents or commissioners of a Contracting State which does not require permission to be obtained for the purposes of taking evidence under Articles 16 or 17.

4-With the following designations and declarations:

The United States Department of Justice, Washington, D.C. 20530, is designated as the Central Authority referred to in Article 2 of the Convention.

Under paragraph 2 of Article 4 of the United States has agreed to accept a Letter of Request in or translated into French. The United States wishes to point out that owing to the necessity of translating such documents into English it will take the Central Authority longer to comply with a Letter of Request in or translated into French than with a similar request received in English.

In accordance with paragraph 3 of Article 4 the United States declares that it will also accept Letters of Request in Spanish for execution in the Commonwealth of Puerto Rico.

In accordance with Article 8 the United States declares that subject to prior authorization members of the judicial personnel of the requesting authority of another Contracting State may be present at the execution of a Letter of Request. The Department of Justice is the competent authority for the purpose of this Article.

Full Text of Convention on Taking Evidence Abroad in Civil or Commercial Matters

The United States declares that evidence may be taken in the United States under Article 16 and 17 without its prior permission.

In accordance with Article 18 the United States declares that a diplomatic or consular officer or a commissioner authorized to take evidence under Articles 15, 16 or 17 may apply for appropriate assistance to obtain the evidence by compulsion. The competent authority for the purposes of Article 18 is the United States district court of the district in which a person resides or is found. Such court may order him to give his testimony or statement or to produce a document or thing for use in a proceeding in a foreign tribunal. The order may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court.

In accordance with Article 40 the United States declares that the Convention shall extend to Guam, Puerto Rico and the Virgin Islands.

MODEL FOR LETTERS OF REQUEST RECOMMENDED FOR USE IN APPLYING THE HAGUE CONVENTION OF 18 MARCH 1970 ON THE TAKING OF EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS

REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE PURSUANT TO THE HAGUE CONVENTION OF 18 MARCH 1970 ON THE TAKING OF EVIDENCE IN CIVIL OR COMMERCIAL MATTERS

N.B. Under the first paragraph of article 4, the Letter of Request shall be in the language of the authority requested to execute it or be accompanied by a translation into that language.

Full Text of Convention on Taking Evidence Abroad in Civil or Commercial Matters

However, the provisions of the second and third paragraphs may permit use of other languages.

In order to avoid confusion, please spell out the name of the month in each date.

Full Text of Convention on Taking Evidence Abroad in Civil or Commercial Matters

I *(Items to be included in all Letters of Request.)*

1 Sender
*(identity and address)*_____

2 Central Authority of the Requested State
*(identity and address)*_____

3 Person to whom the executed request is to be returned
*(identity and address)*_____

II *(Items to be included in all Letters of Request.)*

4 In conformity with article 3 of the Convention, the undersigned applicant has the honour to submit the following request:

5 a Requesting judicial authority (article 3, a)
*(identity and address)*_____

b To the competent authority of (article 3, a)
*(the requested State)*_____

6 Names and addresses of the parties and their representatives (article 3, b)

a Plaintiff_____

Full Text of Convention on Taking Evidence Abroad in Civil or Commercial Matters

b Defendant_____

_____

c Other parties_____

_____

7 Nature and purpose of the proceedings and summary of the facts (article 3, c)_____

_____

8 Evidence to be obtained or other judicial act to be performed (article 3, d)_____

_____

_____

III *(Items to be completed where applicable.)*

9 Identity and address of any person to be examined (article 3, e)_____

_____

10 Questions to be put to the persons to be examined or statement of the subject matter about which they are to be examined (article 3, f)

*(or see attached list)*_____

_____

11 Documents or other property to be inspected (article 3, g)
(specify whether it is to be produced, copied, valued, etc.)

_____

12 Any requirement that the evidence be given on oath or admiration and any special form to be used (article 3, h)

Full Text of Convention on Taking Evidence Abroad in Civil or Commercial Matters

(In the event that the evidence cannot be taken in the manner requested, specify whether it is to be taken in such manner as provided by local law for the formal taking of evidence.)

_____

13 Special methods or procedure to be followed (articles 3, i and 9)_____

_____

14 Request for notification of the time and place for the execution of the Request and identity and address of any person to be notified (article 7)_____

_____

15 Request for attendance of participation of judicial personnel of the requesting authority at the execution of the Letter of Request_____

_____

16 Specification of privilege or duty to refuse to give evidence under the law of the State of origin (article 11, b)

_____

_____

17 The fees and costs incurred which are reimbursable under the second paragraph of article 14 or under article 26 of the Convention will be borne by

*(identity and address)*_____

_____

_____

Full Text of Convention on Taking Evidence Abroad in Civil or Commercial Matters

IV *(Items to be included in all Letters of Request.)*

18 Date of request

---

19 Signature and seal of the requesting authority

NEW YORK CIVIL PROCEDURE LAW AND RULES SECTIONS 3130, 3131, 5601 AND 5602 RULES 3132, 3133 AND 3134

§3130. Use of interrogatories

After commencement of an action, any party may serve upon any other party written interrogatories. A party may not serve written interrogatories on another party and also demand a bill of particulars pursuant to section 3041 nor, in the case of an action to recover damages for an injury to property or a personal injury resulting from negligence or wrongful death, take a deposition pursuant to rule 3107 without leave of court.

Added L.1963, c. 422, §3, and amended L.1979, c. 197, §1.

Federal Rules of Civil Procedure

Interrogatories to parties, see Rule 33, 28 U.S.C.A.

§3131. Scope of interrogatories

Interrogatories may relate to any matters embraced in the disclosure requirement of section 3101 and the answers may be used to the same extent as the depositions of a party. Interrogatories may require copies of such papers, documents or photographs as are relevant to the answers required, unless opportunity for this examination and copying be afforded.

New York Civil Procedure Law and Rules: Sections 3130, 3131, 5601 and 5602; Rules 3132, 3133 and 3134

Added L. 1963, C. 422, §3; amended L.1975, c. 859, §1.

Federal Rules of Civil Procedure

Interrogatories to parties, see Rule 33, 28 U.S.C.A.

Rule 3132. Service of interrogatories

After commencement of an action, any party may serve upon any other party written interrogatories. If service is made by any plaintiff upon any defendant within twenty days after service upon him of the summons and complaint, or service is made by any defendant upon the plaintiff within five days after service upon him of the summons and complaint, leave of court granted with or without notice must be obtained. A copy of the interrogatories and of any order made under this rule shall be served on each party. Added. L.1963, c. 422, §3.

Federal Rules of Civil Procedure

Interrogatories to parties, see Rule 33, 28 U.S.C.A.

Rule 3133. Objections to interrogatories

(a) When objection may be made. Within ten days after service of interrogatories, the party upon whom they are served may move upon notice to strike out any interrogatory, stating the grounds for objection.

(b) Suspension pending ruling. The answer to any interrogatory to which objection is made shall be deferred until the objections are ruled on by the court. Added L.1963, c. 422, §3.

Rule 3134. Answers to interrogatories

(a) How answers to be made. Interrogatories shall be answered in writing under oath by the party upon whom served, if an individual, or, if the party served is a corporation, a partnership, or a sole proprietorship, by any officer, director, agent or employee having the information. Each question shall be answered separately and fully and each answer shall be preceded by the question to which it responds.

(b) Service of answers. Within fifteen days after service of the interrogatories, the party upon whom they are served shall serve a copy of his answer upon each of the parties, except that any interrogatory objected to and not stricken shall be answered within five days after service of a copy of an order determining the motion to strike the interrogatory or within such time as the court shall direct.

(c) Amended answers. Amendments to answers to interrogatories may be made only by order of the court upon motion. Added L.1963, c. 422, §3; amended L.1964, c. 388, §§17, 18.

New York Civil Procedure Law and Rules: Sections 3130, 3131, 5601 and 5602; Rules 3132, 3133 and 3134

Federal Rules of Civil Procedure

Interrogatories to parties, see Rule 33, 28 U.S.C.A.

§5601. Appeals to the court of appeals as of right

(a) Dissent, reversal or modification. An appeal may be taken to the court of appeals as of right in an action originating in the supreme court, a county court, a surrogate's court, the family court, the court of claims or an administrative agency, from an order of the appellate division which finally determines the action, where (i) there is a dissent on a question of law in favor of the party taking such appeal, or (ii) such order directs a reversal of the judgment or order appealed from, or (iii) such order directs a modification thereof in a substantial respect, which is within the power of the court of appeals to review on such appeal, and the party taking the appeal is aggrieved by the modification.

(b) Constitutional grounds. An appeal may be taken to the court of appeals as of right:

1. from an order of the appellate division which finally determines an action where there is directly involved the construction of the constitution of the state or of the United States; and

2. from a judgment of a court of record of original instance which finally determines an

action where the only question involved on the appeal is the validity of a statutory provision of the state or of the United States under the constitution of the state or of the United States.

(c) From order granting new trial or hearing, upon stipulation for judgment absolute. An appeal may be taken to the court of appeals as of right in an action originating in the supreme court, a county court, a surrogate's court, the family court, the court of claims or an administrative agency, from an order of the appellate division granting or affirming the granting of a new trial or hearing where the appellant stipulates that, upon affirmance, judgment absolute shall be entered against him.

(d) Based upon non-final determination of appellate division. An appeal may be taken to the court of appeals as of right from a final judgment entered in a court of original instance or from a final determination of an administrative agency, or from an order of the appellate division which finally determines an appeal from such a judgment or determination, where the appellate division has made an order on a prior appeal in the action which necessarily affects the judgment or determination and which satisfies the requirements of subdivision (a) or of paragraph one of subdivision (b) except that of finality. As amended L.1963, c. 532, §39; L.1967, c. 342, §§1, 2; L.1969, c. 999; L.1973, c. 95, §2.

New York Civil Procedure Law and Rules: Sections 3130, 3131, 5601 and 5602; Rules 3132, 3133 and 3134

§5602. Appeals to the court of appeals by permission.

(a) Permission of appellate division or court of appeals. An appeal may be taken to the court of appeals by permission of the appellate division granted before application to the court of appeals, or by permission of the court of appeals upon refusal by the appellate division or upon direct application:

1. in an action originating in the supreme court, a county court, a surrogate's court, the family court, the court of claims or an administrative agency.

(i) from an order of the appellate division which finally determines the action and which is not appealable as of right, or

(ii) from a final judgment of such court or final determination of such agency where the appellate division has made an order on a prior appeal in the action which necessarily affects the final judgment or determination and the final judgment or determination is not appealable as of right pursuant to subdivision (d) of section 5601; and

2. in a proceeding instituted by or against one or more public officers or a board, commission or other body of public officers or a court or tribunal, from an order of the appellate division

which does not finally determine such proceeding, except that the appellate division shall not grant permission to appeal from an order granting or affirming the granting of a new trial or hearing.

(b) Permission of appellate division. An appeal may be taken to the court of appeals by permission of the appellate division:

1. from an order of the appellate division which does not finally determine an action, except an order described in paragraph two of subdivision (a) or subparagraph (iii) of paragraph two of subdivision (b) of this section or in subdivision (c) of section 5601;

2. in an action originating in a court other than the supreme court, a county court, a surrogate's court, the family court, the court of claims or an administrative agency,

(i) from an order of the appellate division which finally determines the action, and which is not appealable as of right pursuant to paragraph one of subdivision (b) of section 5601, or

(ii) from a final judgment of such court or a final determination of such agency where the appellate division has made an order on a prior appeal in the action which necessarily affects the final judgment or determination and the final

judgment or determination is not appealable as of right pursuant to subdivision (d) of section 5601, or

(iii) from an order of the appellate division granting or affirming the granting of a new trial or hearing where the appellant stipulates that, upon affirmance, judgment absolute shall be entered against him.

As amended L. 1967, c. 342,§§3, 4.

FRENCH PENAL CODE LAW NO. 80-538 OF JULY 15, 1980 AS TRANSLATED IN PARKER SCHOOL STUDIES IN FOREIGN AND COMPARATIVE LAW, COLUMBIA UNIVERSITY, *FRENCH LAW: CONSTITUTION AND SELECTIVE LEGISLATION* 8-49 to 50 (1981)

PENAL CODE

LAW NO. 80-538 OF JULY 16, 1980,

Concerning the Communication of Documents and Information or an Economic, Commercial or Technical Nature to Foreign Natural or Legal Persons

(J.O. July 18, 1980)

Art. 1. The title of Law No. 68-678 of July 26, 1968 concerning the communication of documents and information to foreign authorities engaged in maritime commerce is modified as follows:

> "Law concerning the communication of documents and information of an economic, commercial, industrial, financial or technical nature to foreign natural or legal persons."

Art. 2.—1.—Article 1 of the abovementioned Law No. 68-678 of July 26, 1968 is written as follows:

> "Art. 1. Subject to treaties or international agreements, every natural person of French nationality or residing habitually in French territory, and every manager (*dirigeant*), representative, officer (*agent*) or agent (*prepose*) of a legal person having its seat or an establishment

there, is forbidden to communicate in writing, orally or in any other manner, at any place, documents or information of an economic, commercial, industrial, financial or technical nature whose communication is capable of injuring the sovereignty, the security, the essential economic interests of France, or the public order, as specified by the administrative authority to the extent necessary."

II.—There is inserted, after article 1 of the abovementioned Law No. 68-678 of July 26, 1968, an article 1 *bis* written as follows:

"Art. 1 *bis*. Subject to treaties or international agreements and to the laws and regulations in force, every person is forbidden to request, to seek or to communicate, in writing, orally or in any other manner, documents or information of an economic, commercial, industrial, financial or technical nature intended to serve as evidence in foreign judicial or administrative proceedings or within the scope of the latter."

Art. 3. Article 2 of the abovementioned Law No. 68-678 of July 26, 1968 is modified as follows:

"Art. 2. The persons mentioned in articles 1 and 1 *bis* are required to inform the competent minister immediately when they are in receipt of any request concerning such communications."

Art. 4. Article 3 of the abovementioned Law No. 68-678 of July 26, 1968 is modified as follows:

French Penal Code Law No. 80-538 of July 15, 1980

"Art. 3. Without prejudice to the more severe penalties prescribed by law, every infraction of the provisions of articles 1 and 1 *bis* of the present law is punishable by imprisonment of from two to six months and a fine of from 10,000 F to 120,000 F or by only one of these two penalties."

FRENCH PENAL CODE LAW NO. 80-538 OF JULY 16, 1980, APPENDICE ON CODE DE COMMERCE, PETIS CODES DALLOZ (SOLIZANTE — SEIZIEME ED.) 1980-81 (ORIGINAL FRENCH VERSION)

9° Communication de renseignements a des personnes etrangeres.

Loi n• 68-678 du 26 juillet 1968,

Relative a la communication de documents ei renseignements d'ordre economique, commercial, industriel, financier ou technique a des personnes physiques ou morales etrangeres (L. n• 80-538 du 16 juill. 1980).

Art. 1⁴. (L. n• 80-538 du 16 juill. 1980) Sous reserve des traites ou accords internationaux, il est interdit a toute personne physique de nationalite irancaise ou residant habituellement sur le territoire irancais et a tout dirigeant, representant, agent ou prepose d'une personne morale y ayant son siege ou un elablissement de communiquer par ecrit, oralement ou sous toute autre forme, en queique lieu que ce soit, a des autoriles publiques etrangeres. les documents ou les renseignements d'ordre economique, commercial, industriel, unancier ou technique dont la communication est de nature a porter atteinte a la souverainete, a la securite, aux interets

economiques essentiels de la France ou a l'ordre public, precises par l'autorite administrative en tant que de besoin.

1⁴ bis. (L. n• 80-538 du 16 juill. 1980) Sous reserve des traites ou accords internationaux et des lois et regiements en vigueur, il est interdit a toule personne de demander, de rechercher ou de communiquer, par ecrit, oralement ou sous toute autre forme,

des documents ou renseignements d'ordre economique, commercial, industriel, financier ou technique tendant a la constitution de preuves en vue de procedures judiciaires ou administratives etrangeres ou dans le cadre de celles-ci.

2. (L. n• 80-538 du 16 juill. 1980) Les personnes visces aux articles 1[a] et 1[a] bis sont tenues d'informer sans delaile minusire competent lorsquielles se trouvent saisies de toute demande concernant de teiles communications.

3. (L. n• 80-538 du 16 juill. 1980) Sans prejudice des peines plus lourdes prevues par la joi, toute infraction aux dispositions des articles 1[a] et 1[a] bis de la presente loi sera punie d'un emprisonnement de deux mois a six mous et d'une amende de 10 000 F a 120 000 F ou de l'une de ces deux peines seulement.

LETTER OF THE FRENCH MINISTRY OF JUSTICE TO JAMES G. HERGEN, ESQ. OF THE OFFICE OF FOREIGN LITIGATION, UNITED STATES DEPARTMENT OF JUSTICE, DATED MARCH 9, 1981

DEPARTMENT OF STATE
Division of Language Services

(Translation)

LS NO. 102319
RHO/MM
French

Ministry of Justice
13, Place Vendome

The Director of Civil Affairs and the Seal

Paris, March 9, 1981

Mr. James G. Hergen
Attorney, Office of Foreign Litigation
Civil Division
Department of Justice
Washington, D.C., U.S.A.

Sir:

You have requested my department's opinion on the scope and significance of the Law of July 16, 1980, amending the Law of July 26, 1968, concerning the disclosure of documents and information of an economic, commercial, industrial, financial, or technical nature to foreign natural or juristic persons. You have requested specific information regarding any effects this law

Letter of the French Ministry of Justice to James B. Hergen, Esq. Dated March 9, 1981

may have on the implementation of The Hague Convention of 1970 on the taking of evidence abroad in civil or commercial matters, to which France and the United States are parties, as well as persons liable to incur the penalties stipulated by the law following violation of the provisions of its Article 1 bis.

I have the honor to inform you that Article 1 bis of the Law of July 16, 1980, amending the Law of July 26, 1968, is intended to ensure the enforcement in French territory of the regulations on the taking of evidence abroad as they are established in civil and commercial matters in France's relations with the United States by the provisions of The Hague Convention of March 18, 1970, together with the declaration and reservation made by the French government, taking the provisions of the French Code of Civil Procedure into consideration.

In accordance with the terms of these regulations, the only two methods of investigation in French territory that may be ordered by foreign legal authorities, subject to the condition established by these instruments, are letters of request [*] and taking of evidence by diplomatic officers, consular agents, and commissioners (Chapters I and II of The Hague Convention of March 18, 1970, and Articles 733 et seq of the new French Code of Civil Procedure).

Nothwithstanding the agreement between the parties, Article I bis of the Law of July 16, 1980 prevents recourse in French territory to any other methods of investigation or procedure for

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[* This term is used in the Hague Convention of March 18, 1970; the usual term is letters rogatory.]

Letter of the French Ministry of Justice to James B. Hergen, Esq.
Dated March 9, 1981

taking of evidence that is considered unlawful, particularly recourse to requests for direct disclosure of documents or information.

Moreover, Article 1 bis makes it possible to punish violations of the conditions established in The Hague Convention and in the declaration which the French government made at the time of ratification of this instrument for the execution of letters of request and the taking of evidence by commissioners. Notwithstanding the agreement between the parties, the law thereby makes it possible to prevent recourse to evidence taken by commissioners without prior authorization by my department.

It should be emphasized that the information communicated to you on the scope and significance of the Law of July 16, 1980, concerns only the relations of judicial cooperation between our two countries in civil and commercial matters. My department had an opportunity to clarify these different points in its reply to a question in writing from Mr. Chinaud, a deputy, of which a copy is enclosed.

I also have the honor to inform you that the penalties stipulated by the Law apply irrespective of the status, nationality, or domicile of the person concerned.

Therefore the Law of July 16, 1980, has given full effect to our relations of judicial cooperation by assuring improved implementation of the provisions of The Hague Convention of March 18, 1970 and by enabling American litigants to obtain evidence in France. by methods that are in conformity with the international commitments of our two countries, for use in judicial proceedings in the United States.

Letter of the French Ministry of Justice to James B. Hergen, Esq.
Dated March 9, 1981

If there is no objection, I would be grateful if you would inform the judicial authorities and legal practitioners of your country of this opinion.

Naturally, I would be willing to furnish any additional information. I am enclosing a copy of the legislative history of this law.

Very truly yours,

[Signature]
Renaud Deneix de Saint Marc

FIRST SET OF INTERROGATORIES TO CLUB MEDITERRANEE, S.A.

SUPREME COURT OF NEW YORK STATE
NEW YORK COUNTY

Index No. 4777/82

MARJORIE SCHLOSSBERG DORIN and
PHILIP A. DORIN

Plaintiffs,

-v-

CLUB MEDITERRANEE, S.A., et al,

Defendants

PLEASE TAKE NOTICE that plaintiffs, by their attorney, THOMAS A. DICKERSON, and pursuant to C.P.L.R. Article 31, submits the following Interrogatories to defendant Club Mediterranee, S.A., to be answered under oath and in writing within fifteen (15) days after service hereof.

INTERROGATORIES

Interrogatory #1

State the name, address, position and title of the person answering these interrogatories.

Interrogatory #2

Set forth whether or not Club Mediterranee, S.A. [hereinafter "Club Med"] is;

a. the owner of the Club Med facility in Haiti;
b. the lessor of the Club Med facility in Haiti
c. the lessee of the Club Med facility in Haiti
d. the manager of the Club Med facility in Haiti;
e. the builder of the Club Med facility in Haiti
f. the entity that maintains the Club Med facility in Haiti

Interrogatory *#3*

If the answer to any of the Interrogatories set forth in "#2" above is yes, then describe each and every document in your possession which describes said relationship; the description of documents should include the title, the date, the number of pages, to whom addressed, name of the sender and the document's present location.

Interrogatory #4

State when construction began on the Club Med facility in Haiti and when it was completed. Identify all entities who were involved in the construction of the Club Med facility in Haiti to include their name, address, present location and a detailed description of duties during the construction period.

Interrogatory *#5*

Regarding the construction of the Club Med facility in Haiti describe all plans utilized to include the name of the plan, the number of pages and the present location of these documents.

Interrogatory #6

State whether or not Club Med has an operational manual which relates to the construction of facilities and, particularly,

the Club Med facility in Haiti. If the answer is yes then describe this manual to include its name, the number of pages and its present location.

Interrogatory #7

State whether or not Club Med has an operational manual which relates to the operation of facilities and, particularly, the Club Med facility in Haiti. If the answer is yes then describe this manual to include its name, the number of pages and its present location.

Interrogatory #8

State the name and address of all persons accommodated at the Club Med facility in Haiti during the period when the plaintiffs stayed there.

Interrogatory #9

State the time period during which the Club Med facility in Haiti has been open to the reception of guests. Regarding this period state each and every occurrence of gastro-intestinal disorders reported by guests to your attending medical personnel and/or reflected in complaint letters received by you or your agents, joint ventures and representatives. Regarding said reported occurrences and complaints set forth the name and address of each guest reporting and/or complaining of such disorders to include reports of the contraction of any disease including typhoid fever, malaria and salmonella infections.

First Set of Interrogatories to Club Mediterranee, S.A.

Interrogatory #10

State whether or not you recommend and/or require your employees at the Club Med facility in Haiti to take appropriate shots and/or medicines to combat typhoid fever and malaria.

Interrogatory #11

State whether or not inspections have been made of the Club Med facilities in Haiti regarding the sanitation systems, the food storage and preparation facilities, the water systems and of those personnel responsible for maintaining and operating same. If the answer is yes, describe each and every inspection done during the period when the facility was open to the reception of guests and identify each and every written report generated therefrom to include the name of the report, its date, and the name of the sender and the name of the receiver and its present location.

Interrogatory #12

State the date when consideration was given to the possibility of constructing and operating a Club Med facility in Haiti. Regarding that date to present, state whether or not you ever possessed documents, reports and memorandum [created by you or by others] which described and/or discussed the incidence of diseases in Haiti to include malaria, typhoid fever and tuberculosis. If the answer is yes, then describe each and every such document, report and memorandum to include its name, the date, the name of the creator, the name of the sender and the name of the receiver and its present location.

Interrogatory #13

State the name, address, title and position of the following persons;

First Set of Interrogatories to Club Mediterranee, S.A.

a. the present manager of the Club Med facility in Haiti;

b. all managers of the Club Med facility in Haiti from the date the facility was open to the reception of guests to the present;

c. all medical personnel at the Club Med facility in Haiti from the date the facility was open to the receiption of guests to present;

d. that person responsible for overseeing and monitoring sanitation facilities, food storage and preparation and medical facilities at all Club Med facilities throughout the world.

Dated: September 14, 1982

YOURS ETC

THOMAS A. DICKERSON
545 Fifth Avenue
NY NY

T O : Kroll, Pomerantz & Cameron
500 Fifth Avenue
NY NY

D'Amato & Lynch
70 Pine Street
NY NY

McCormick, Dunne & Foley
71 Broadway
NY NY

Feder, Kaszovitz, Weber & Skala
450 Seventh Avenue
NY NY

APPELLANT'S MOTION FOR LEAVE TO APPEAL TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

Index No.: 4777/82

MARJORIE SCHOLOSSBERG DORIN and PHILIP DORIN,

Plaintiffs-Respondents,

-against-

CLUB MEDITERRANEE, S.A.,

Defendant-Appellant,

-and-

CLUB MED, INC., CELEBRITY TRAVEL SERVICE, LTD., KENT TRAVEL SERVICE, INC., SOCIETE GENERALE and NATIONAL UNION FIRE INSURANCE,

S I R :

PLEASE TAKE NOTICE, that upon the affirmation of Robert Stein, Esq., and upon the order of the Hon. Justice Stanley Parness, entered and filed in the office of the Clerk of the County of New York on January 5, 1983, denying the motion, in part, of the moving defendant herein, CLUB MEDITERRANEE, S.A., for a protective order striking plaintiffs' interrogatories dated September 14, 1982, and upon the order of Appellate Division, First Department, entered in the office of the Clerk of the Appellate Division, First Department, on April 26, 1983, affirming

the order appealed from without opinion, and upon the record on appeal to this Court from the order entered in the office of the Clerk of the County of New York on January 5, 1983, and upon all prior proceedings had heretofore and additional exhibits annexed hereto, the undersigned will move this Court at a Term to be held at the Courthouse, located at 27 Madison Avenue and 25th Street, New York, New York on June 9, 1983 at 10:00 in the forenoon of that day or as soon thereafter as counsel can be heard for an order pursuant to CPLR §5602 (b)(1), granting leave to defendant CLUB MEDITERRANEE, S.A. to appeal to the Court of Appeals from the order of the Appellate Division, on the grounds that the aforesaid orders were erroneous as a matter of law and directly contravene superseding federal and international law and treaty; and for the certificate of the Appellate Division certifying that the following questions of law were decisive in its determination and present issues which merit review by the Court of Appeals:

1. Are the provisions of the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, (hereafter, Hague Evidence Convention), 28 U.S.C. §1781, applicable to pre-trial discovery proceedings in a New York State Supreme Court action involving a French corporation as a party defendant?

2. Do the provisions of the Hague Evidence Convention, which has been formally adopted and enacted by the governments of the United States and France, supersede conflicting New York State procedural law in the administration of a civil case in this state?

3. Are the courts of this State barred, pursuant to the mandates of international law and comity, from compelling a French domiciliary to violate the penal laws of France by disclosing

information through pre-trial discovery procedures which contravene the requirements of the Hague Evidence Convention?

And for such other and further relief as to this Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to stipulation, answering papers, if any, must be served upon the undersigned on or before June 1, 1983.

Dated: May 20, 1983
New York, New York

Yours, etc.,

KROLL, POMERANTZ & CAMERON
Attorneys for Defendant-Appellant
500 Fifth Avenue
New York, New York 10110
(212) 921-9080

TO: Thomas Dickerson, Esq.
Attorney for Plaintiffs-Respondents

Appellant's Motion for Leave tc Appeal

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

Index No.: 4777/82

MARJORIE SCHLOSBERG DORIN and PHILIP DORIN,

Plaintiffs-Respondents,

-against-

CLUB MEDITERRANEE, S.A.,

Defendant-Appellant,

-and-

CLUB MED, INC., CELEBRITY TRAVEL SERVICE, LTD., KENT TRAVEL SERVICE, INC., SOCIETE GENERALE and NATIONAL UNION FIRE INSURANCE,

AFFIRMATION

ROBERT STEIN, an attorney duly admitted to practice law before the courts of this State, aware of the penalties for perjury affirms as follows:

Your affirmant is associated with the law firm of Kroll, Pomerantz and Cameron, attorneys for the defendant/appellant, CLUB MEDITERRANEE, S.A.

INTRODUCTION

Your affirmant submits this affirmation in support of the instant motion pursuant to CPLR §5602 (b)(1) granting leave to

the aforesaid defendant/appellant to appeal the order of this Honorable Court dated April 26, 1983 and to certify the following questions of law as decisive in its determination herein:

1. Are the provisions of the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, (hereinafter, Hague Evidence Convention), 28 U.S.C. §1781, applicable to pre-trial discovery proceedings in a New York State Supreme Court action involving a French corporation as a party defendant?

2. Do the provisions of the Hague Evidence Convention, which has been formally adopted and enacted by the governments of the United States and France, supersede conflicting New York State procedural law in the administration of a civil case in this state?

3. Are the courts of this State barred, pursuant to the mandates of international law and comity, from compelling a French domiciliary to violate the penal laws of France disclosing information through pre-trial discovery procedures which contravene the requirements of the Hague Evidence Convention?

It is respectfully submitted to the Court for the reasons outlined below and in the previously submitted appellate briefs herein that the answers to the aforesaid questions should be in the affirmative.

PROCEDURAL HISTORY OF THIS ISSUE

This motion and the appellate order from which it is taken spring from a motion for a protective order by the appellant to strike the interrogatories propounded by the plaintiff to the French defendant, CLUB MEDITERRANEE, S.A., on the grounds that

they were procedurally defective and in clear contravention to binding U.S. and international law and treaty as well as French penal law.

By order of the Hon. Stanley Parness, dated and entered in the office of the Clerk of New York County on January 5, 1983, the aforesaid motion was denied in substantial part and the appellant's contention that pre-trial discovery proceedings against a French national sued herein are regulated by the provisions of the Hague Evidence Convention was deemd, ". . .without merit."

An appeal was taken from that order to this Court. The order has been affirmed without opinion as reflected in the order of this Court entered on April 26, 1983 in the office of the Clerk of the Appellate Division, First Department. Said order is annexed hereto as Exhibit "A" and made a part hereof.

ARGUMENT

The Convention on the Taking of Evidence Abroad in Civil or Commercial Matters was ratified by the United States Senate and proclaimed by the President on September 15, 1972. Then Secretary of State Rogers in his letter of submittal to the President of November 9, 1971, recommending the adoption of the Convention, stated:

> . . .the provisions of the Convention are in conformity with the improved procedures for international judicial assistance adopted by the Congress in Public Law 88-619 and embodied in Section 1782 of Title 28, United States Code.[1]

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1. Message from the President of the United States, 92 Cong. 2d Sess. (1972) at (v).

He further noted that the United States had proposed the revisions relating to the taking of evidence in foreign countries.[2] The need for such revisions arose from ". . .[t]he substantial increase in litigation with foreign aspects arising, in part, from the unparalleled expansion of international trade and travel in recent decades [which] had intensified the need for an effective international agreement to set up a model system to bridge differences between the common law and civil law approaches to the taking of evidence abroad."'[3] Finally, he concluded by stating:

> The Convention is a major contribution to the elimination of formal and technical obstacles to securing evidence abroad.[4]

The President, in his transmittal letter to the Senate further stated:

> This Convention is a significant step forward in the field of international judicial cooperation. It will premit our courts and litigants to avail themselves of a number of improved and simplified procedures for the taking of evidence.[5]

The President also advised the Senate that ratification of the Convention was supported by, *inter alia*, the American Bar Association, the Judicial Conference of the United States, and

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2.. *id* at v.

3. *id* at vi.

4. *id* at x.

5. *id* at III.

the National Conference of Commissions on Uniform State Laws. Thus, it can be readily seen that the Convention was adopted with not only the enthusiastic support of the executive and legislative branches of the United States Government, but also that of the highest governing bodies of the "bench" and the "bar."

There can be no dispute that treaties to which the United States is a party are part of the supreme law of the land. They must be adhered to in good faith. *See* U.S. Const. Art. VI, Cl. 2; *United States v. Pink*, 315 U.S. 203, 232-34 (1942); *United States v. Belmont*, 301 U.S. 324, 330-31 (1937); *Torres* (7th Cir. 1979) ("Under Article VI, Clause 2 of the United States Constitution treaties are part of the Supreme Law of the Land."); *Continental Dredging Co. v. County of Los Angeles*, 366 F. Supp. 1133, 1136 (C.D. Cal. 1973) ("The provisions of treaties with foreign states must be meticulously adhered to."); RESTATEMENT OF LAW, FOREIGN RELATIONS LAW (REVISED), T.D. No. 1§324 (1980) ("Every international agreement in force is binding upon the parties to it and must be performed by them in good faith.")

The Hague Evidence Convention requires that a specific procedure be followed when evidence is sought from the foreign domiciliary of a signatory nation in pre-trial proceedings such as in the case at bar. A discussion of those procedures can be found in the brief on appeal but it is uncontroverted that no effort was made to comply with any of the requirements of this law.

It appears self-evident that judicial sanction of the plaintiff's non-compliance will effectively abrogate the express terms of a binding international treaty. Such a result would clearly have adverse repercussions both here and abroad in the administration of international litigation.

Appellant's Motion for Leave to Appeal

The very issues presently before this court have been the subject of litigation in other states. As will be discussed below, the relevant questions of law have been presented to the U.S. Supreme Court in the case of *Volkswagenwerk, A.G. v. Falzone*, No. A-875 (4/29/83), in the form of application for stays pending appeal, and will, upon information and belief, come before the Court for resolution on the merits in the near future.

Additionally the issues presented herein have recently come before the United States District Court for the Eastern District of Pennsylvania in the case of *Rockwell International Corporation v. Costruzioni Aeronautiche Giovanni Agusta, S.P.A. and S.N.F.A.*, (Civil Action No. 81-3984). As evidenced by the affidavit of Barrie Snider, Esq., as well as the Order of the Hon. James Giles, annexed hereto as Exhibit "B", the aforesaid U.S. District Court decided the same issue by ordering compliance with the terms and provisions of the Hague Evidence Convention, i.e., letters rogatory.

It is respectfully submtited that the Court herein erred in upholding a judicial determination which contravenes the express mandates of superceding U.S. statutory and constitutional law.

As also noted in the appellant's brief, compliance with the order of the Justice Parness would constitute a violation of French penal law and subject CLUB MEDITERRANEE, S.A., its officers, directors and employees, to the imposition of criminal sanctions. Documentary evidence annexed in the record below have indicated the intention of the French government to strictly enforce the terms of this treaty in the case of violations by French nationals. It is respectfully submitted that the courts of this nation have historically recognized that the principle of international law and comity prohibit the indiscriminate applications of U.S. law

which is inconsistent with the internal laws of another sovereign state. See *Volkswagenwerk, A.G. v. Superior Court*, 123 Cal. App. 34d 840, 176 Cal. Rptr. 874 (1981). As noted in the appellant's brief before the Court, the judicial order in question contravenes not only French law, but superseding U.S. law as well.

BASIS OF APPLICATION FOR LEAVE TO APPEAL

It is respectfully submitted that a determination of the above issues for which certification is sought was decisive in this Court's disposition of the appeal in question and that said issues involve substantial questions of federal statutory and constitutional law as well as international law and treaty. The ultimate resolution of these issues will have a great and far reaching impact upon the voluminous amount of litigation in this State involving foreign and multi-national corporations. It involves as well clear issues of United States constitutional law and the interpretation of binding treaty commitments enacted and adopted by the government of the United States. The questions presented in this case are not subject to precedent in New York State and it is only through review and decision by the Court of Appeals that a uniform standard for the application of the treaty and statute in question may be adopted in this State.

The very issues presented herein have been reviewed twice by the U.S. Supreme Court in the case of *Volkswagenwerk A.G. v. Falzone, et al., supra.* The motions before the Court were in the form of applications for emergency stays pending a disposition on the merits of the very issues now pending in the case at bar. The Supreme Court granted the appellants applications in both instances. A copy of the order of Justice O'Connor is annexed hereto as Exhibit "C" and made a part hereof. The Court's attention is directed to her reference to Chief Justice Burger's prior order and her discussion thereto.

Appellant's Motion for Leave to Appeal

> "In granting the stay pending the disposition of the appeal to the Michigan Supreme Court, *the CHIEF JUSTICE must have concluded that there was a substantial chance that four Justices would agree to consider the case on the merits, that there was a significant chance that the applicant would prevail,* and that the injury resulting from the denial of a stay would be irreparable. See generally *Graves v. Barnes*, 405 U.S. 1201, 1203-1204 (1972) (POWELL, J., in Chambers)." (emphasis added).

It is also noted that the Michigan Supreme Court has denied the application for leave to appeal and therefore the final, adverse decision will now be presented to the U.S. Supreme Court on the merits for ultimate resolution in the near future. Upon information and belief, a direct appeal to the U.S. Supreme Court on the issues raised by the application of the Hague Evidence Convention, is being filed by the attorneys for the appellants therein, and, pursuant to Justice O'Connor's order, there is at least a significant chance that the above appellant's will prevail.

In conclusion, the issues upon which the request for certification to the Court of Appeals is based, present questions of law which are clearly of such significance and import so to merit review by the Court of Appeals or a stay pending review by the U.S. Supreme Court of the aforesaid case of *Volkswagenwerk A.G. v. Falzone, supra.*

WHEREFORE, it is respectfully requested that the appellant, CLUB MEDITERRANEE, S.A., be granted leave to appeal to the Court of Appeals upon the questions to be certified by this Court, as noted above, or in the alternative for a stay pending a disposition of the issues herein by the United States Supreme Court in the case of *Volkswagenwerk, A.G. v. Falzone, supra,*

and for whatever other and further relief this Court deems just and proper.

Dated: May 20, 1983
New York, New York

s/ Robert Stein
ROBERT STEIN

Appellant's Motion for Leave to Appeal

EXHIBIT A

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on April 26, 1983

Present—Hon. Joseph P. Sullivan, Justice Presiding
David Ross
Arnold L. Fein
E. Leo Milonas
Bentley Kassal, Justices.

MARJORIE SCHLOSSBERG DORIN and PHILIP DORIN,
Plaintiffs-Respondents,

-against-

CLUB MEDITERRANEE, S.A.,
Defendant-Appellant,

-and-

CLUB MED, INC., CELEBRITY TRAVEL SERVICE, LTD., KENT TRAVEL SERVICE, INC., SOCIETE GENERALE and NATIONAL UNION FIRE INSURANCE,
Defendants.

16526N

An appeal having been taken to this Court by the above-named appellant from an order of the Supreme Court, New York County (Parness, J.), entered on January 5, 1983, which granted

defendant-appellant's motion for a protective order striking plaintiffs' interrogatories only to the extent of striking interrogatories 8, 9, 12 and 13(d),

And said appeal having been argued by Robert Stein of counsel for appellant, and by Thomas A. Dickerson of counsel for respondents; and due deliberation having been had thereon,

It is unanimously ordered that the order so appealed from be and the same is hereby affirmed. Respondents shall recover of appellant $50 costs and disbursements of this appeal.

ENTER:

JOSEPH J. LUCCHI
Clerk.

Appellant's Motion for Leave to Appeal

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FIRST DEPARTMENT

Index No. 4777/82

MAJORIE SCHLOSSBERG DORIN and PHILIP DORIN,

Plaintiffs-Respondents

-against-

CLUB MEDITERRANEE, S.A.,

Defendant-Appellant,

-and-

CLUB MED, INC., CELEBRITY TRAVEL SERVICE LTD., KENT TRAVEL SERVICE, INC., SOCIETE GENERALE and NATIONAL UNION FIRE INSURANCE,

Defendants.

STATE OF NEW YORK)
:ss.:
COUNTY OF NEW YORK)

BARIE W. SNIDER, being duly sworn deposes and says:

I am associated with the law firm of Kroll, Pomerantz & Cameron, attorneys for the movant(s), herein CLUB

MEDITERRANEE' S.A. This affidavit is submitted in support of motion for certification of question to the Court of Appeals.

On May 17, 1983, I attended a hearing before Judge James T. Giles, Judge of the United States District Court for the Eastern District of Pennsylvania in an action entitled *Rockwell International Corporation v. Costruzioni Aeronautiche Giovanni Agusta, S.p.A. and S.N.F.A.*, Civil Action No. 81-3984. That hearing was conducted in order to hear oral argument on a motion made on behalf of defendant S.N.F.A. for reconsideration of Judge Giles prior order ordering S.N.F.A. to provide discovery requested by plaintiff Rockwell International Corporation pursuing to the Federal Rules of Civil Procedure.

S.N.F.A. is a domiciliary of the Republic of France, and the prior order of Judge Giles was in violation of the terms and procedures established by the Hague Convention on the taking of evidence abroad in Civil and Commercial Matters.

Following oral argument, Judge Giles of the United States District Court of the Eastern District of Pennsylvania determined that the above Convention is a treaty of the United States, binding upon his court and all courts in the United States. Consequently, Judge Giles rescinded his prior order compeling S.N.F.A. to provide discovery, and order the plaintiff Rockwell Corporation to seek discovery in accordance with the terms and procedures established by the Convention.

Dated: New York, New York
May 20, 1983

s/ Barie W. Snider
BARIE W. SNIDER

Sworn to before me
this 20th day of May, 1983

s/ Robert Stein
ROBERT STEIN
Notary Public, State of New York
No. 31-4043793
Qualified in New York County
Commission Expires March 30, 1985

Appellant's Motion for Leave to Appeal

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROCKWELL INTERNATIONAL CORPORATION

v.

COSTRUZIONI AERONAUTICHE GIOVANNI AGUSTA, S.P.A. and SNFA

CIVIL ACTION

NO. 81-3984

FILED MAY 20, 1983

ORDER

AND NOW, this 20th day of May, 1983, for the reasons stated in the Bench Decision rendered May 17, 1983, it is hereby ORDERED that:

1. SNFA's Motion for Reconsideration is GRANTED. This court's order dated March 18, 1983 is VACATED.

2. Rockwell shall proceed with discovery of SNFA by letters rogatory, complying with all requirements of the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters.

3. Rockwell's Motion to Stay SNFA's Discovery is GRANTED, pending Rockwell's receipt of the answers to interrogatories and production of the documents requested of SNFA.

Appellant's Motion for Leave to Appeal

4. Agusta's Motion for a Protective Order is DENIED, but its Motion for Extention of the Discovery Deadline is GRANTED. The scheduling order of March 24, 1983 is VACATED. A new schedule will be established upon receipt by this court of responses to the letters rogatory.

BY THE COURT:

s/ James T. Giles

ENTERED: 5/23/83
CLERK OF THE COURT

Appellant's Motion for Leave to Appeal

SUPREME COURT OF THE UNITED STATES

No. A-875

VOLKSWAGENWERK A.G. *v.* JOSEPH and BARBARA FALZON, etc.

ON APPLICATION FOR STAY

[April 29, 1983]

JUSTICE O'CONNOR, Circuit Justice.

Under Rule 44.4, the Justices of this Court will not entertain an application for a stay unless the applicant has first sought relief from the appropriate lower court or courts, except "in the most extraordinary circumstances." I conclude that this case presents most extraordinary circumstances and will therefore entertain the application and grant a stay.

The applicant is a German corporation that is defending an action in the Michigan state courts. The plaintiffs in that action seek to depose a number of employees of the applicant, all of whom reside in the Federal Republic of Germany. Attempting to prevent the depositions in the trial court, the applicant argued that the method the plaintiffs sought to employ violated the Convention on Taking of Evidence Abroad in Civil or Commercial Matters, 28 U.S.C. §1781, a treaty to which the United States and the Federal Republic of Germany are parties. See Department of State, Treaties in Force 249 (1983). The trial court denied the motion, and the Michigan Court of Appeals denied leave to appeal. The applicant then sought review in the Michigan Supreme Court. Meanwhile, the trial court ordered that the depositions take place on or before August 30, 1982, and the plaintiffs filed notice to

take the depositions on August 23, 1982. The applicant then applied to the Michigan Supreme Court for an emergency stay of the order and for immediate consideration of the order. When the state supreme court did not act, the applicant sought a stay from this Court, and on August 23, 1982, THE CHIEF JUSTICE granted a stay pending final disposition of the appeals before the Michigan Supreme Court. *Volkswagenwerk A.G. v. Falzon,* A-191, O.T. 1981 (order of August 23, 1982). He later denied a motion to vacate the stay. *Volkswagenwerk A.G. v. Falzon,* A-191, O.T. 1981 (order of September 2, 1982).

On February 22, 1983, the Michigan Supreme Court denied the applicant's application for leave to appeal. At that point, the stay entered by THE CHIEF JUSTICE expired by its own terms. The plaintiffs then filed notice of taking depositions, scheduling the depositions for May 2, 1983. On April 4, 1983, the applicant sought a stay of the depositions from the Michigan Supreme Court, pending disposition of its appeal to this Court of the earlier judgment of the Michigan Supreme Court. The state supreme court has not acted, so the applicant now seeks a stay from this Court pending disposition of the appeal here.

In granting the stay pending the disposition of the appeal to the Michigan Supreme Court, THE CHIEF JUSTICE must have concluded that there was a substantial chance that four Justices would agree to consider the case on the merits, that there was a significant chance that the applicant would prevail, and that the injury resulting from the denial of a stay would be irreparable. See generally *Graves v. Barnes,* 405 U.S. 1201, 1203-1204 (1972) (POWELL, J., in Chambers). Since the question on the merits is unchanged, it is essentially the "law of the case" that a stay would be appropriate, unless, of course, the response presents new information. Cf. *Shlesinger v. Holtzman,* 414 U.S. 1321, 1324-1325, and nn. 3, 4 (1973) (Douglas, J., dissenting) (single Justice not empowered to vacate stay granted by another

Justice); R. Stern and E. Gressman, Supreme Court Practice 866-867 (5th ed. 1978) (same). Consequently, the failure of the Michigan Supreme Court to act promptly should not prevent a member of this Court from entertaining an application to stay the order pending final disposition of the appeal in this Court. Proper deference to the Michigan Supreme Court, however, requires that the court have an opportunity to dispose of the stay application before it. Accordingly, I grant the stay pending disposition of the application for a stay in the Michigan Supreme Court.

Appellant's Motion for Leave to Appeal

STATE OF NEW YORK)
:ss.:
COUNTY OF NEW YORK)

JOAN WELSH, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides in Queens, New York.

That on the 25th day of May, 1983, deponent served the within Notice of Motion for Leave to Appeal upon:

Thomas Dickerson, Esq.
545 Fifth Avenue
New York, New York 10017

in this action at the address designated by said attorney for that purpose by depositing same enclosed in a post paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.

s/
JOAN WELSH

Sworn to before me this
25th day of May, 1983.
s/
GLADYS BART-WILLIAMS
Notary Public, State of New York
No. 03-4749100
Qualified in Bronx County
Commission Expires March 30, 1984